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Docket No. _____

In the SUPREME COURT of the UNITED STATES

William R. Yee (P35984), Petitioner

v

Judge James R. Clatterbaugh P11953, et al respondents

On Petition for Writ of Certiorari:

to the Michigan Supreme Court

Petition for Writ of Certiorari, Brief of Petitioner

William R. Yee appearing pro se,
P. O. Box 310, Owosso, MI 48867-0310
989 666-2878

Questions Presented

Does the routine denial of denial of the right of a party to be present at judicial proceedings, and denial of a party's rights to file pleadings and have them entered into the record, and denial of the right of an evidentiary hearing before making findings of fact against a party operate to violate of the rights of citizens to due process protected by the 14th Amendment of the United States Constution.

Petitioner says "Yes", Respondents would say "No."

Does this case present a manifestation of pervasive judicial discretion that has eroded the institution of marriage in this country so that at this time three out of four households are single parent households simply because the general population is unwilling to risk appearances in courts during divorce procedures?

Petitioner says "Yes", Respondents would say "No."

Does this case present an attack upon pro se litigant and the right to represent oneself in a court of law?

Petitioner says "Yes", Respondents would say "No."

A list of all parties

Michigan Supreme Court: No. 124546, COA No. 247965, 35th Circuit, Family Court No. 01-009756-NA; William R. Yee (P35984) pro se, Petitioner; Judge James R. Clatterbaugh P11953, Respondent; Clerk of the Court, Shiawassee County Circuit Court, Family Division, Respondent; Craig R. Wininger P57058, (or Prosecutor's Office, Respondent); Respondent; Robert H Hoschner P15140, Respondent;; Lynn D. Bowne P25976, Respondent; Christine Roche', Respondent; SRY-Yee Minor, Respondent; SRY-Yee Minor, Respondent; and GRY-Yee Minor, Respondent; Michigan SC: 116727, COA: 220965, Shiawassee CC: 98-002249-DM;

Michigan Supreme Court: No. 116727, COA: 220965, Shiawassee CC: 98-002249-DM, William R. Yee (P35984) pro se, Petitioner; CHRISTINE ROCHE', Respondent; v PHILIP DULMAGE, Respondent; and

Michigan Supreme Court: No. 117260, COA: 225478, Genesee CC: 99-210505-DO No. 116727, COA: 220965, Shiawassee CC: 98-002249-DM, William R. Yee (P35984) pro se, Petitioner; PHILIP DULMAGE, Respondent v CHRISTINE ROCHE', Respondent; and

35th Judicial Circuit Court, Shiawassee County, 208 N. Shiawassee, Corunna, MI 48817-1447, 989 743-2236 Fax 743-2214 Case No: 95-5692-DM; Judge Gerald D. Lostracco P16808; William R. Yee, Petitioner; Christine Roche', Respondent; Judge Gerald D. Lostracco P16808, Respondent; Amy Husted Respondent

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Statement basis jurisdiction:

On Nov 29 2001 the Court of Appeals dismissed a claim of appeal of the order of July 20, 2001 as premature as it was not a final order, Appendix pages 6-7.

On April 19, 2002 the Court of Appeals issued an order in lieu of Superintending control, Appendix page 79.

On Jun. 14, 2002 the Court of Appeals issued an unpublished opinion, Appendix pages 3-6.

On Jun. 5, 2003 the Court of Appeals dismissed a second complaint for superintending control, Appendix pages 1-2

Petitioner filed a timely Motion for Rehearing on 6/20/03 which was denied Aug. 8, 2003, Appendix pages 3.

Petitioner filed a timely Application for Leave to Appeal on August 29, 2003

The Michigan Supreme Court denied leave to appeal on Jan 27, 2004, Appendix pages 3-4.

The United States Supreme Court has jurisdiction as this Petition was filed less than ninety days after January 27, 2004 on or before April 26th, 2004, Supreme Court Rule 13(1) and 28 USC § 1257 (a) applies

The United States Supreme Court has jurisdiction over *Roche' v Dulmage*, and *Yee, Intervenor/Appellant*, 463 Mich 862, 617 N.W.2d 559; (2000), Judge Gerald D. Lostracco P16808" and *Dulmage v Roche', and Yee*, 463 Mich 944; 620 NW2d 851 (2000), Judge Gadola" and *Roche' v Yee*, 35th Circuit Court Case No. 95-5692-DM as "companion cases" pursuant to Supreme Court Rule 14(1)(h)(ii). Court Rule 29(4)(b) does not apply.

The constitutional provisions

United States Constitution, Amendment V:

United States Constitution, Amendment XIV:

Operative Facts

In 1994 Petitioner William R. Yee, hereinafter Petitioner Yee did enter into a dispute with neighbors on Bambi Lake, alleging that the neighbors were flooding Petitioner Yee's property at 5281 Lake Drive, Owosso, Michigan, hereinafter 5281 Lake Drive.

In 1994 Petitioner Yee retained a series of attorneys who were unable to complete the case, finally retaining Respondent Philip Dulmage, hereinafter Respondent Dulmage 2001, in the winter of 1997. The object was to protect Petitioner Yee's quiet enjoyment of 5281 Lake Drive by abating the alleged flooding by the neighbors on Bambi Lake and obtaining money for the damages caused by the flooding to the home and property. Respondent Dulmage did represent Petitioner Yee in *Yee v Braidwood, JR.*, 465 Mich 935, 638 NW2d 758 (2000) and *William R. Yee, Plaintiff-Appellant and MDEQ, Respondent/Intervening Plaintiff Below v George Braidwood II et al*, Michigan SC 2 122125; COA 226614 Genesee County 95-038534-CH, Shiawassee County 95-004535-CH.

On 6/14/96 Judge Gerald D. Lostracco P16808 hereinafter Respondent Judge Lostracco COA: 225478, Genesee CC: 99-210505-DO, did sign a consent judgment of divorce between Petitioner Yee (Defendant) and Respondent Christine Roche' (plaintiff), hereinafter Respondent Roche' in 35th Circuit Court Case No: 95-5692-DM. Petitioner Yee and Respondent Roche' had

joint and equal custody to G. R. Yee a female minor, S. R. Yee a female minor, and S. R. Yee a male minor, hereinafter referred to collectively as the "Yee minors".

Respondent Dulmage did meet Respondent Roche' in the spring of 1997. Respondent Dulmage did marry Respondent Roche' on July 31st, 1997.

Respondent Dulmage did move into 5281 Lake Drive without Petitioner Yee's knowledge or permission on or about July 31st, 1997.

Without Petitioner Yee's knowledge or permission Respondent Dulmage and Respondent Roche' did start persuading the Yee Minors to accept adoption by Respondent Dulmage, thereby terminating Petitioner Yee's parental rights.

In August of 1997 Petitioner Yee did find out that Respondent Dulmage was living at 5281 Lake Drive and persuading the Yee Minors to accept adoption by Respondent Dulmage. Petitioner Yee did voice vigorous objection to Respondent Dulmage living at 5281 Lake Drive and attempting to adopt the Yee minors.

Petitioner Yee did have reason to believe that Respondent Dulmage and Respondent Roche' were interfering with Petitioner Yee's parenting time.

Petitioner Yee had reason to believe that Respondent Dulmage and Respondent Roche' were abusing the Yee Minors.

Petitioner Yee was not able to take action to stop the abuse of the Yee Minors because the Yee Minors were under the influence of Respondent Dulmage and Respondent Roche' and making representations to the Friend of the Court that gave the appearance that Respondent Roche' was the better custodial parent.

On or about May of 1998 Respondent Dulmage did stop living at 5281 Lake Drive.

Later in 1998 Respondent Roche' filed for divorce from Respondent Dulmage in *Roche' v Dulmage* , and *Yee, Iervenor/Appellant*, 463 Mich 862, 617 N.W.2d 559; (2000), before Judge Gerald D. Lostracco P16808.

Respondent Dulmage did counter file for an annulment in 98-002249-DM.

Petitioner Yee did file as an intervener pursuant to MCR Rule 2.209(A)(3) as the annulment would operate to raise Petitioner Yee's alimony obligation to Respondent Roche' from 20% to 50% of Petitioner Yee's income.

Respondent Dulmage did threaten to withdraw as Petitioner Yee's attorney in *Yee v. Shiawassee County Bd. of Comm'Rs*, 468 Mich. 852; 658 N.W.2d 491, (2003) and *Yee v Braidwood JR.* (2001) COA No. 221945 UnPUBLISHED if Petitioner Yee did not withdraw objections to the annulment of the marriage of Respondent Roche' to Respondent Dulmage. Petitioner Yee Petitioner Yee refused to withdraw objections to the annulment.

Respondent Dulmage did in fact withdraw from both *Yee v. Shiawassee County Bd. of Comm'Rs*, 468 Mich. 852; 658 N.W.2d 491, (2003) and *Yee v Braidwood JR.* (2001) COA No. 221945 because Petitioner Yee refused to withdraw objections to the annulment.

On Wednesday, December 17, 1998 Judge Gerald D. Lostracco P16808 did conduct a trial on Respondent Dulmage's motion for annulment in 98-002249-DM.

After taking testimony from, Respondent Roche', Respondent Dulmage, and Petitioner Yee Judge Gerald D. Lostracco P16808 did review the facts and the law.

Judge Lostracco did find that Respondent Roche' and Respondent Dulmage were sophisticated in divorce and annulment law.

Judge Lostracco did make a finding that Respondent Roche' was not under the detrimental influence of medications.

Judge Lostracco did review the law and facts and did determine that because Respondent Roche' had continued "cohabitating" with Respondent Dulmage after she had knowledge that Mr. Dulmage was impotent, there was no longer grounds for annulment in Michigan.

Judge Lostracco did review the law and facts and did determine that because Respondent Dulmage had Respondent Dulmage "cohabitated" with Respondent Roche' after he had knowledge that Respondent Roche' had a tubal ligation , there was no longer grounds for him to annul their marriage on December 17, 1998.

Judge Lostracco did deny Petitioner Yee's motion to intervene pursuant to MCR Rule 2.209(A)(3). As a result Petitioner Yee could not file a judgment denying the annulment of the marriage of Respondent Dulmage to Respondent Roche'. Respondent Dulmage had the case dismissed without entry of a written judgment.

Respondent Dulmage then filed for an annulment in Genesee County Circuit Court in *Philip Dulmage, Plaintiff-Appellee, v Christine Roche', Defendant-Appellee, and William R. Yee, Intervener/Appellant*, Michigan SC: 117260, COA: 225478, Genesee CC: 99-210505-DO, Judge Gadola. The annulment was granted on 2-22-1999.

Respondent Dulmage and Respondent Roche' obtained an annulment from Judge Gadola on the same basis that

Judge Lostracco had denied the annulment Judge Gadola Granted. The difference being that Respondent Roche' and Respondent Dulmage did not make a record that they had "cohabitated", (i. e. lived together after they had knowledge that there was a basis for an annulment), which operates to waive the right to annulment in Michigan.

Respondent Dulmage then did appear and represent Respondent Roche's interests in opposition to Petitioner Yee's interests in cases No: 95-5692-D and No.: 01-009756-NA.

On Thursday, July 27th, 2000 about 8:00 PM Respondent Roche' did beat G. R. Yee a female minor in front of S. R. Yee a male minor and S. R. Yee a female minor, hereinafter referred to collectively as the "Yee minors".

On Thursday, July 27th, 2000 Petitioner Yee did take G. R. Yee a female minor to the Memorial Hospital Emergency Room in Owosso, Michigan where she was examined and treated for the beating late in July 27 and early on July 28th, 2000.

Due to the severity of the injuries suffered, the emergency room staff notified the Shiawassee County Sheriff and the Owosso Police.

Respondent Roche' was arrested and charged with Child Abuse - 1st Degree in *People vs Christine Marie Roche'* 66th District Court Case No. 00-ST-1048 before Judge Ward L. Clarkson.

On 12/21/00 Respondent Roche' was sentenced to 8 months probation, $500.00 court costs, Supervision Fee $10.00/month, Community Service, 10 sessions, and Counseling, Parenting Class and Continue treatment with

Drs. Coleman & Pope by Judge Clarkson in 66th District Court Case No. 00-ST-1048.

On 12/21/2000 Petitioner Yee filed a Petition to Terminate the parental rights of Respondent Christine Roche' to the "Yee minors", No. 1009756.

No. 1009756 was assigned to Judge James R. Clatterbaugh P11953, hereinafter Respondent Judge Clatterbaugh, in the Shiawassee County Circuit Court, Family Division, State of Michigan.

On 01/09/2001 Respondent Lynn D. Bowne P25976 appeared as Guardian Ad Litem for the three minor Yee Children.

Respondent Dulmage did appear as attorney for Respondent Roche' in No: 95-5692-DM and No. 1009756-3 but did not file a formal appearance.

Respondent Craig R. Wininger P57058 appeared on behalf of the Shiawassee County Prosecutor.

On 03/02/2001 Respondent Judge Clatterbaugh entered a CASE MANAGEMENT ORDER that included a deadline of 3-8-2001 for Petitioner Yee to submit an Amended Petition.

Petitioner Yee filed the 1st Amended Petition according to the CASE MANAGEMENT ORDER.

On 03-05-2001 Respondent Dulmage withdrew as attorney for Respondent Roche' in No. 1009756.

On 03-06-01 Respondent Dulmage withdrew as attorney for Respondent Roche' in No: 95-5692-DM.

Amy Lou Husted P51928 appeared for Respondent Roche' in case No: 95-5692-DM.

ON 04/30/2001 In No. 1009756-3 Respondent Robert H Hoschner P15140 did appear as attorney for

Respondent Christine Roche'.

On 07/16/2001 Respondent Judge Clatterbaugh conducted a formal hearing.

On 07/16/2001 MR. HOSCHNER made a motion to sequester the Yee minors.

Petitioner Yee objected on the grounds that the Yee minors as parties had a right to attend and watch the proceedings, Appendix pages 4, 39.

Respondent Judge Clatterbaugh ruled that the Yee minors were not parties to the action. And that the Yee minors could watch if they did not testify. If the Yee minors were to testify they could not watch. "THE COURT: Yeah, if they don't want to testify they can sit there and watch," see Appendix, pages 40.

Respondent Judge Clatterbaugh conducted the trial on the original petition and not on the amended petition that Petitioner Yee filed according to the CASE MANAGEMENT ORDER, see Appendix page 20-21.

Petitioner Yee asserted that the pleadings are designed to provide the criteria and basis for a claim, but that the hearing, the evidentiary hearing, is necessary to make on the record the full extent of the abuse, Appendix pages 41.

Respondent Judge Clatterbaugh responded that we "do need a hearing. I mean, we need the hearing to establish the dispositional phase and the best interest phase", see Appendix page 41.

Respondent Judge Clatterbaugh accepted jurisdiction upon Respondent Roche's stipulations to provisions in the original petition and not upon the amended petition submitted by Petitioner Yee on 03-02-01 according to the CASE MANAGEMENT ORDER, see Appendix page 42.

Respondent Judge Clatterbaugh then did announce that we still need to make a decision whether or not there are grounds for termination, see Appendix page 42.

Petitioner Yee started examining Respondent Christine Roche', Appendix page 42.

Respondent Wininger interrupted to state that the Court has accepted jurisdiction based on the admissions of Respondent Roche' and to state that the court could not take additional evidence, Appendix pages 44-45.

Petitioner Yee asserted that the best interests of the children required an evidentiary hearing and Petitioner Hoschner answered that the best interest of the children is not what we're dealing with, Appendix page 48.

Petitioner Yee argued that the appellant rulings are full of the Courts exercising discretion in the strict application of the rules. Petitioner Yee argued that the Court can go back and open up the jurisdictional part of it for examination and evidentiary hearings. The Court is not compelled to press forward, Appendix page 48.

Respondent Bowne indicated that the best interests of the children required protection and the jurisdiction of the court was absolutely necessary until it can be proven that Respondent Roche' would not represent a risk of serious harm to the Yee minors, Appendix page 49.

Petitioner Yee asserted that Respondent Wininger had a duty to protect the community and should not should feel good about what he was doing, Appendix page 50.

Respondent Judge Clatterbaugh asserted that he had limited options and could not take additional evidence, Appendix page 50-51.

Respondent Judge Clatterbaugh did find that there was legal justification for termination of parental rights, Appendix page 51.

Respondent Bowne stated that the Yee minors just do not want to see Respondent Roche', Appendix page 67.

Respondent Judge Clatterbaugh did prohibit visitation, Appendix page 53.

Respondent Judge Clatterbaugh did state that he would keep control of this case to make sure that if something happens to dad that these children would be placed with a relative of his, Appendix page 55..

Respondent Judge Clatterbaugh declared that Respondent Roche' was going have to prove to that she had control of her life and justifiably earn some trust with the Yee minors to see them, Appendix page 55.

Respondent Judge Clatterbaugh did adopt a 66th District Court order that did deny Respondent Roche' contact to G. R. Yee a female minor, Appendix page 55.

On 07-20-2001 Respondent Judge Clatterbaugh signed and the clerk filed an ORDER FOR FORMAL TRIAL, see Appendix pages 22-25.

Respondent Judge Clatterbaugh conducted a dispositional hearing on 10-29-2001, Appendix pages 39-56.

Petitioner Yee argued that there be a reconsideration because the prosecutor called a point of order that once the Court establishes jurisdiction, then all further evidentiary proceedings cease and then the Court is required to make a ruling. Petitioner Yee argued that was misconstruction of the rules for the reason that it would permit the Respondent to stipulate to the allegations and

prevent any evidence necessary to make a determination that it was in the child's best interest to terminate parental rights, Appendix page 62.

Respondents objected that Petitioner Yee was submitting evidence. Petitioner Yee responded that he was not submitting evidence but outlining the scope of the evidence available to the court if the court permitted an evidentiary hearing., Appendix page 63-64.

Respondent Bowne argued that the court was "handcuffed" and could not change its decision not to permit an evidentiary hearing pursuant to MCR 5.992, Appendix page 84. Respondent Bowne did not argue that they were entitled to the benefits of MCR 3.923, formerly MCR 5.923, "(A) Additional Evidence. If at any time the court believes that the evidence has not been fully developed, it may: (1) examine a witness, (2) call a witness, or (3) adjourn the matter before the court, and (a) cause service of process on additional witnesses, or (b) order production of other evidence."

Petitioner Yee argued that there was an Amended Petition as requested by the Court and that amended petition does stand. Respondent Bowne and Respondent Wininger ignored the Amended Petition argued that there was an order of July 20th of 2001 Appendix page 67.

Petitioner Yee argued that he was not presenting evidence; but outlining the scope of evidence that this Court does not have, Appendix page 64.

Respondent Judge Clatterbaugh made a finding that this matter has been battled on in circuit court in front of Judge Lostracco, (i. e. No: 95-5692-DM and No. 98-002249-DM). He's (Judge Lostracco) made some

rulings and basically came out of there and this has now been filed here. This is an admission by Respondent Judge Clatterbaugh that after accepting stipulations on the part of Respondent Roche' and after refusing an evidentiary hearing he was considering matters not before Judge Clatterbaugh but matters before Judge Lostracco in making his findings, Appendix page 68.

Respondent Judge Clatterbaugh made a finding that there's no question Mrs. Roche abused the one child, she's taken the consequences in District Court. She did her probation, Appendix page 68.

Respondent Judge Clatterbaugh made a finding that there was history and that the bottom line is this appears to be just a vindictive method of trying to get to a point of, I'm not sure what, Appendix page 68.

Respondent Judge Clatterbaugh did this after accepting jurisdiction upon stipulations form Respondent Roche' and refusing to permit an evidentiary hearing.

Petitioner offered an order denying the motion, Appendix page 69.

Respondent Hoschner objected, "I think that it outta include, your Honor, the additional..," Appendix Page 69.

Respondent Judge Clatterbaugh anticipated Respondent Hoschner's objection, "Well we'll make our own order outta that Mr. Hoschner," Appendix Page 69.

Judge James R. Clatterbaugh added, "THE COURT: The Court will also submit an order coming out of the transcript of this record," Appendix Page 70.

Respondent Wininger asked, "The Court will submit it's own order?" Appendix Page70.

Respondent Judge Clatterbaugh answered, "Yes," Appendix Page 70.

Respondent Wininger replied, "I have no objection," Appendix Page 70.

Respondent Judge Clatterbaugh announced, "Court's adjourned, (At 9:14 a.m., proceedings concluded)" Appendix Page 70.

On 10-31-2001 Respondent Judge Clatterbaugh signed two orders, not entered into the docket, see Appendix pages 22-24.

The first order signed on 10-31-2001 was an Order of Disposition, Appendix pages 22-23.

The second order signed on 10-31-2001 was the Order for Hearing on Motion for Reconsideration, Appendix pages 23-24.

On November 5th Petitioner Yee filed a motion for reconsideration of the order to dismiss with prejudice, with Respondent Clerk.

Respondent Judge Clatterbaugh happened to be present and attempted to persuade Petitioner Yee not to file the motion.

When Petitioner Yee insisted on filing the motion for reconsideration of the ORDER to dismiss this matter with prejudice, Respondent Judge Clatterbaugh instructed Respondent Clerk to accept the filings but not to enter them into the docket, see the docket entries of 2-4-2002 and 5-10-2002, Appendix pages 70-78.

Petitioner Yee filed a complaint for superintending control for the purpose of compelling Respondent Judge Clatterbaugh to have the motion to reconsider dismissal with prejudice entered into the docket for action.

The Court of appeals issued the following:

> in lieu of granting the complaint for superintending control, the Court orders under MCR 7.206(D) and MCR 7.21 6(A)(7) that defendant is ordered to direct the circuit court clerk to enter into the lower court record the July 20, 2001 order for formal trial and the October 31, 2001 order of disposition, after which plaintiff may pursue any further remedies to which he may be entitled under the court rules.

Appendix page 79.

The Court of Appeals did not order Respondent Judge Clatterbaugh to conduct a hearing on the 1st Amended Petition filed in response to the CASE MANAGEMENT ORDER.

The Court of Appeals did not order Respondent Judge Clatterbaugh to conduct an evidentiary hearing to cure the lack of evidence that was known to be available but was not entered into the record to make a complete determination on the issues of termination of Respondent Roche's parental rights to the Yee minors and the best interests of the Yee minors that were not addressed

Arguments of Law: Due Process Rights

Petitioner asserts that the Michigan Court rules provide for the following:

Michigan Court Rules

MCR 1.103: The Michigan Court Rules govern practice and procedure in all courts…

MCR 1.105: These rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that .. affect the substantial rights of the parties.

MCR 2.107(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the court clerk…

MCR 3.901, formerly MCR 5.901;

(1) The rules in this subchapter, in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court …

MCR 3.903(A), formerly 5.903(A)…17, 23, 24

(8) "File" means …. the pleadings and other documents and materials related to a case.

(18) "Party" includes the

(b) petitioner, child, respondent, and parent, … in a protective proceeding.

(21) "Petitioner" means the person .. who requests the court to take action.

(24) "Records" means the pleadings, motions, authorized petition, notices, memorandums, briefs, exhibits, available transcripts, findings of the court, register of actions, and court orders.

(25) "Register of actions" means the permanent case history maintained …MCR 8.119(D)(1)(c).

MCR 8.119. Duties of Clerks…

(A) Applicability. This rule applies to all actions in every trial …

(C) Filing of Papers. The clerk of the court shall endorse on the first page of every document the date on which it is filed…..

(D) Records Kept by the Clerk. The clerk of the court of every trial court shall keep …Indexes and Case Files. The clerk shall keep and maintain records of each case …

(c) The clerk shall keep a case history of each case, known as a register of actions…

(d) Case File. The clerk of the court shall maintain a file folder for each action, bearing the case number …

Petitioner Yee asserts that the Michigan Courts below denying due process for its citizens as demonstrated by the case below and its companion cases. Petitioner Yee does refer the United States Supreme Court to a prior petition for certiorari, No. 03-352 filed on 09/08/2003.

Petitioner Yee pleads for protection of the Fifth and Fourteenth Amendments of the United States Constitution pursuant to *Kampf v Kampf*, 237 Mich. App. 377, 381-382; 603 N.W.2d 295 (1999):

> The federal and Michigan constitutions guarantee that the state cannot deny people "life, liberty, or property without due process of law." U.S. Const, Am XIV; Const 1963, art 1, § 17. Due process, …*Palmer v Bloomfield Hills Bd of Ed*, 164 Mich. App. 573, 576; 417 N.W.2d 505 (1987), specifically enforces the rights …in the Bill of Rights, and …provides for substantive and procedural due process. *Daniels v Williams*, 474 U.S. 327, 337; 106 S. Ct. 662; 88 L. Ed. 2d 662 (1986). Procedural due process limits actions by the government and requires … safeguards in proceedings that affect those rights protected by due process, such as life, liberty, or property. See *Electro-Tech, Inc v HF Campbell Co*, 433 Mich. 57, 66, n 9; 445 N.W.2d 61 (1989); *Dow v Michigan*, 396 Mich. 192, 202; 240 N.W.2d 450 (1976).

Petitioner Yee incorporates all of the facts alleged above.

Petitioner Yee asserts that Respondent Judge Clatterbaugh did conduct a trial on July 16, 2001 based upon the original Petition rather than the 1st Amended Petition, a due process violation of Petitioner Yee.

Petitioner Yee asserts that on and after July 16, 2001 the efforts of Respondent Judge Clatterbaugh, Respondent Prosecuting Attorney Wininger, Respondent Bowne, (attorney for the Yee minors) were directed at

(A) making a record that Petitioner Yee had drafted a poor petition,

(B) ignoring the Amended Petition properly filed by Petitioner Yee and

(C) avoiding admission of extensive evidence supporting termination of parental rights.

Petitioner Yee asserts that on November 5th, 2001 Petitioner Yee filed a motion to reconsider the order to dismiss the case with prejudice, but Respondent Judge Clatterbaugh instructed Respondent Court Clerk not to enter it into the file, a fundamental due process violation of Petitioner Yee and the Yee minors, see the case file summaries of 2/04/2002 and 5/10/2002, see appendix pages 70-78.

Petitioner Yee asserts that the Respondent Court Clerk is required to accept all filings by Petitioner Yee under the Michigan Court Rules, stamp them with a date on the day of filing and enter them in the file and the register of actions pursuant to the following Court Rules: MCR 1.105 and MCR 3.901, formerly MCR 5.901; MCR 3.902, formerly MCR 5.902; MCR 8.119(A); MCR 8.119(C) MCR 8.119(D)(1)(c); MCR 8.119(D)(1)(d)

Petitioner Yee asserts that Respondent Judge Clatterbaugh has no authority to tell Respondent Court Clerk not to accept filings, not to date stamp filings and not to enter pleadings and other filings into the case file as required by MCR 8.119(C); MCR 8.119(D)(c); and MCR 8.119(D)(1)(d).

Without filing an entry into the record Appellant/Petitioner cannot appeal. Jurisdiction of the Court of Appeals is based upon the definitions in MCR 7.202. While a motion is pending, no appeal is available.

Petitioner Yee cannot appeal until the motion for reconsideration of 11-5-2001 is ruled upon by the Respondent Judge Clatterbaugh.

(a) Jurisdiction for appeal is based upon filing within 21 days of entry of a judgment or order pursuant to MCR 7.204(A)(1)(a) and (b).

Jurisdiction may be attacked at any time pursuant to *Department of Social Servs. v. Hatcher*, 443 Mich. 426, 505 N.W.2d 834 (1993), "It is beyond question that a party may attack subject matter jurisdiction at any time. *Shane v Hackney*, 341 Mich 91; 67 NW2d 256 (1954). In fact, a proven lack of subject matter jurisdiction renders a judgment void."

Petitioner Yee asserts that conducting the trial on the original petition on July 16, 2001 and denying entry of the motion for reconsideration of order to dismiss on November 5th, 2001 was a fundamental denial of due process under the 5th, and 14th, Amendments to the United States Constitution. The conduct of the courts after those dates must be considered as attacks on due process rights and the right of the citizen to represent himself for the purpose of protecting his rights from Michigan courts and its prosecutors and practicing bar members.

The United States and Michigan constitutions guarantee due process rights pursuant to *Kampf v Kampf*, 237 Mich. App. 377, 381-382; 603 N.W.2d 295 (App. Ct. 1999) 1999 Mich. App. Lexis 244.

Petitioner asserts that the conduct of the courts below is a product of a pervasive distortion of rights protected by the 5th, and 14th Amendments of the United States Constitution. Petitioner asserts that the conduct of the courts below reveals why lawyer bashing is so common outside and why three out of four households are now single parent households. The population is not willing to risk an appearance before the courts in a divorce.

e Courts below err in applying *Ass'n of County Clerks v Lapeer Circuit Judges*, 465 Mich 559, 566; 640 NW2d 567 (2002) which did not rest upon an actual case but sought to define duties without an underlying case in controversy. This case sought superintending control based upon the actions in the case before the Shiawassee County Circuit Court, Family Division, LC No.1-9756 NA, whereas the *Ass'n of County Clerks* was not based upon an actual case in controversy.

Inadequate Representation of the Yee Minors

The Yee minors have not received adequate representation.

On October 29th, 2002, Mr. Bowne did in fact represent the minor Yee children as a court appointed attorney. Mr. Bowne did not argue that the jurisdictional hearing on July 16, 2001 was properly based upon the Amended Petition filed on March 2nd, 2001, and was conducted improperly upon the original petition as follows, page 11 of the transcript:

> MR. YEE: May--may I answer that? I think--I think there was a discussion of--of what was before the Court but I don't think that the--that that was formally entered as an order of the Court and I think that I--I filed an--an amended petition as requested by the

> Court. And I think that amended petition does stand ...
>
> MR. BOWNE: Your Honor, I think the Court's order was July 20th of this year. The final, the most recent order that set this dispositional hearing and making the rulings.

On July 16, 2001, Mr. Bowne urged the trial judge to interview the children rather than testify on the record. Appellant/Petitioner did in fact object to the court substituting a sequestered hearing of the children for an evidentiary hearing, page 23 of the transcript:

> THE COURT: Well, let me short circuit this real quick. Does anybody have any problems with me interviewing the children privately, one at a time?
>
> MR. BOWNE: I would urge it, your Honor.
>
> MR. YEE: I would object if that's—if that interview--if that interview were to pre-empt an evidentiary hearing, and the decision was based simply on their statements for this reason; they lack the capacity to present the evidence necessary. They can tell you what their feelings are, and they can tell you what they want, but they can not provide, in an adequate fashion, the evidence that this Court needs to terminate the parental rights. So what the Court will get is an unsophisticated and naive statement as to what their wishes are. But--and that's why I wanted them to sit and hear what was going on so that they could become more sophisticated and understand more clearly what's actually going on.....

On July 16, 2001 Appellant/Petitioner urged the court to exercise its discretion to re-open the jurisdictional hearing and take evidence that was necessary for the best interest of the children.

Mr. Bowne did not support an evidentiary hearing, pages 31-32 of the transcript attached Appendix page 79:

> MR. YEE: But … the appellant rulings are … full of the Court's exercising discretion in the strict application of the rules. I think that if the Court wants they can go back and open up the jurisdictional part of it for examination and evidentiary hearings. The Court is not compelled to press forward. The Court can back up and reconsider it. …..

Respondent Bowne did not argue MCR 3.923, formerly MCR 5.923:

> (A) Additional Evidence. If at any time the court believes that the evidence has not been fully developed, it may (1) examine a witness, (2) call a witness, or (3) adjourn the matter before the court, and (a) cause service of process on additional witnesses, or (b) order production of other evidence.

On July 16, 2001 Mr. Bowne articulated the Yee minor's attitude, pages 43-44 of the transcript:

> MR. BOWNE: Your Honor …. the children … definitely don't want to see mom, they don't want to go back with mom, they are clear that if dad were to pass away they do not want to live with mom. They have relatives that they are close to on Mr. Yee'.s family side that could take care of them while they are still minors. They have stated that given time … perhaps ... down the road they would visit, but … they are not ready … I don't know if they ever will be … but this beating episode represented sort of the explosion of the volcano that has been brewing for a long time. … all three ..agreed that … they just do not want to see her.

"MR. YEE: I think, if the Court will—the beating of the one child was purposely done in front of the other children to intimidate," Appendix page 52.

Mr. Bowne effectively argued against the admission of further evidence as follows, page 66 of the Appendix:

> MR. BOWNE: Your Honor ... I'm a little bit confused because I--I see that Mr. Yee's filed in the Court of Appeals an appeal where alternatively district court, family court, so I'm not really sure ... And I think this Court is pretty much handcuffed to do anything further because pursuant to this court rule there's nothing new that's being submitted to this Court and so the Court's decision has to stand as this Court communicated last time we were in court. And Mr. Yee's remedy is then to appeal your decision.

On pages 66-67 of the appendix, transcript of 10/29/2002, Petitioner Yee attempted to make his argument:

> MR. YEE: Okay, I will proceed now with the statement on the Motion because my--my argument was interrupted ... William Yee, was in the middle of examining Christine Roche and submitting the evidence this Court requires to make a ruling on terminating parental rights. That--that evidentiary proceeding was interrupted based on a technicality. That technicality is in error ... because if there--if the petition on jurisdiction is considered the evidentiary hearing for termination, then it cannot be terminated while the petitioner is still submitting ...

Appellant/Petitioner asserts that the facts alleged above constitutes a prima facie case of ineffective assistance of counsel contemplated by *People v Lafay*, 182 Mich App

528, 530; 452 NW2d 852 (1990). Appellant/Petitioner asserts that the facts asserted above do in fact establish:

(1) that Mr. Bowne's performance fell below an objective standard of reasonableness under prevailing professional norms, and

(2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different pursuant to *Strickland v Washington*, 466 U.S. 668; 104 S Ct 2052; 80 L. Ed. 2d 674 (1984)); Stanaway, at 687-688.

Bias in the State Courts

The court in fact did not permit an evidentiary hearing and the judge's finding in the paragraph above that Appellant/Petitioner was "vindictive" is not supported by an evidentiary hearing, *Simko v Blake*, 448 Mich. 648, 668; 532 NW2d 842 (1995), "A silent record supports no finding of fact at all."

The court's statement that Appellant/Petitioner was "vindictive" is on its face an indication of consideration of matters not in evidence, and before Judge Lostracco, Shiawassee County Circuit Court No's 95-5592-DM and 02-007749-CZ-L and before Judge Ward L. Clarkson, 66th District Court, Shiawassee County, Case 00-ST-1048, *People vs Christine Roche'*, Child Abuse-1st Degree, and on its face a statement of bias against Plaintiff and squarely within the scope of MCR 2.003 and *Cain v Department of Corrections*, 451 Mich. 470, 514; 548 NW2d 210 (1996).

The minor Yee children are parties pursuant to MCR 3.903(A)(18)(b), formerly MCR 5.903(A)(18)(b).

On the day of trial on July 16th, 201 the court was required to determine that the parties are present pursuant

to MCR 3.972(B)(1), formerly MCR 5.972(B)(1). The minor children may be excused by the trial judge after a determination by the court that the child's interest requires the action.

The trial court in fact sequestered the minor Yee children as witnesses and gave them the alternative of watching the proceedings if they gave up their right to testify. The court did in fact determine that the interests of the children did not require that they be excused from the proceedings. The court in fact did deny the minor Yee children the rights of parties to attend after determining they could watch only by yielding their rights to testify as parties.

The trial court did in fact make the following statement on the record, transcript of October 29th, 2001, pages 12-13:

> THE COURT: ... this Court has been very patient in this matter .... It's my understanding that this matter has been battled on in circuit court in front of Judge Lostracco, he's made some rulings and basically came out of there and this has now been filed here. This Court looked at the documents, the Court narrowed down the petition, this is--this is a petition filed by Mr. Yee against his ex-wife to terminate her rights and the three children ... There's no question Mrs. Roche abused the one child, she's taken the consequences in District Court. She did her probation. There may be a lot of history and that is--is you know out there, but bottom line is--is this appears to this Court to be just--just a vindictive method of trying to get to a point of, I'm not sure what. ...

The court's statement in the paragraph above is on its face an indication of consideration of matters not in

evidence, and before Judge Lostracco, Shiawassee County Circuit Court No's *Roche' v Yee*, 95-5692-DM and *Yee v Dulmage et al*, 02-007749-CZ-L and before Judge Ward L. Clarkson, 66th District Court, Shiawassee County, *People vs Christine Roche'*, Case 00-ST-1048, Child Abuse-1st Degree. It is on its face a statement of bias against Appellant/Petitioner and squarely within the scope of MCR 2.003 and *Cain v Department of Corrections*, 451 Mich. 470, 514; 548 NW2d 210 (1996):

> MCR 2.003(B)(1) requires a showing of actual bias. Absent actual bias or prejudice, a judge will not be disqualified pursuant to this section. *In re Forfeiture of $ 1,159,420,* 194 Mich. App. 134, 151; 486 N.W.2d 326 (1992); *Mourad v Automobile Club Ins Ass'n*, 186 Mich. App. 715, 731; 465 N.W.2d 395 (1991); *Band v Livonia Associates*, 176 Mich. App. 95, 118; 439 N.W.2d 285 (1989).

The court in fact did not permit an evidentiary hearing. The trial judge made his rulings based upon the pleadings and the respondent mother's stipulations to allegations in the original petition and not to allegations in the amended petition. The judge's finding Appellant/Petitioner was "vindictive" is not supported by an evidentiary hearing, *Simko v Blake*, 448 Mich. 648, 668; 532 NW2d 842 (1995)

> "A silent record supports no finding of fact at all,"

The courts below attack pro se litigants

Plaintiffs incorporate all of the facts and arguments above. Plaintiffs assert that the conduct of the respondent judge, the prosecutor, and the court appointed attorney Mr. Bowne in fact is part of a pattern of abuse by the courts and its officers to discourage pro se litigants.

Petitioner asserts that the conduct of respondents is a direct attack on *People v Dennany*, 445 Mich. 412, 427; 519 N.W.2d 128 (1994)

> The right of self-representation under Michigan law is secured by both constitution and statute. Const 1963, art 1, § 13, provides: "A suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney.

Petitioner asserts that the conduct of the courts below described in this petition is responsible for the fact that three out of four families are single parent families. People are not willing to risk divorce courts and exposure to the judiciary and legal system.

Petitioner asserts that the conduct of the respondents described above is part of a pattern of attacking pro se litigants in a society that has more attorneys per capita than any other country with little effect on attorney fees in a free market society where normally supply and demand would dictate low attorney's fees

Relief Sought

Petitioner respectfully requests the United States Supreme Court grant petitioner's request for a writ of certiorari pursuant to Supreme Court Rule 16 and order that the case be scheduled for briefing and oral argument with the purpose of restoring due process to Petitioner Yee and the Yee minors and others similarly situated in state courts in Michigan and other states.

I, William R. Yee, assert that all of the above are true to the best of my knowledge, information and belief.

William R. Yee, Wednesday, April 21, 2004, P. O. Box 310, Owosso, MI 48867-0310, 989 666-2878

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IN THE MICHIGAN COURT OF APPEALS, ORDER
Re: In re William R. Yee, Docket No. 247965, LC No. 01-009756 NA

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), 0), orders:

The complaint for superintending control is DISMISSED for lack of jurisdiction. This Court has no authority to exercise superintending control in the absence of a pending action in circuit court which will result in an

order appealable to this Court MCR 7.203(C)(1); *Ass'n of County Clerks v Lapeer Circuit Judges*, 465 Mich 559, 568-569; 640 NW2d 567 (2002).

(sig) William C. Whitbeck

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

(Seal State of Michigan Court of Appeals) Jun 5 2003 (sig)Sandra Schultz Mengel

Date Chief Clerk

Court of Appeals, State of Michigan, ORDER

In re Yee, Docket No.247965, LC No. 01-009756-NA, Michael J. Talbot, Presiding Judge; Kathleen Jansen, Christopher M. Murray, Judges, The Court orders that the motion for reconsideration pursuant to MCR 7.215(I) is

DENIED

(sig) Michael J. Talbot, A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, (Seal State of Michigan Court of Appeals) on

AUG 8 2003 (sig)Sandra Schultz Mengel

Date Chief Clerk

Michigan Supreme Court, Lansing, Michigan, Maura D. Corrigan, Chief Justice; Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Clifford W. Taylor, Stephen J. Markman, Robert P. Young, Jr., Justices, Order 124546 Entered: January 27, 2004; SC: 124546, COA: 247965, Shiawassee CC: 01-009756-NA

IN RE WILLIAM YEE, WILLIAM YEE, Plaintiff-Appellant, v SHIAWASSEE CIRCUIT JUDGE, Defendant-Appellee.

Appendix Page On order of the Court, the application for leave to appeal the June 5, 2003 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

b0120 Seal of the Michigan Supreme Court, Lansing. I, CORBIN R. DAVIS, Clerk of the

Michigan Supreme Court, certify that the

foregoing is a true and complete copy of the order entered at the direction of the Court.

January 27, 2004. sig (Corbin R. Davis), Clerk.

STATE OF MICHIGAN COURT OF APPEALS No. 237869, LC No. 01-009756-NA Shiawassee Circuit Court Family Division

June 14, 2002 UNPUBLISHED

In the Matter of S.Y., S.Y., and G.Y., Minors

WILLIAM YEE, Petitioner-Appellant, v CHRISTINE ROCHE, Respondent-Appellee, and FAMILY INDEPENDENCE AGENCY, Appellee.

Before: Bandstra, P.J., and Hoekstra and

O'Connell, JJ. PER CURIAM.

Petitioner appeals as of right from the family

court's July 20, 2001, order assuming jurisdiction over the minor children and making them temporary wards of the court.' We affir

Petitioner first argues that the family court erred in ordering that the children be sequestered at the initial hearing on July 16, 2001, on the basis that they were scheduled to testify as witnesses. Petitioner contends that the children had the right to be present throughout the

proceedings because they were parties to the proceeding. We disagree.

The decision whether to sequester witnesses is generally left to the family court's discretion. *In re Jackson*, 199 Mich App 22, 29; 501 NW2d 182 (1993). Petitioner is correct that a child who is the subject of a child protective proceeding is

considered a party. MCR 5.903(A)(13)(b). The child must be appointed counsel and the attorney for the child must be present at every hearing. MCR 5.915(B)(2). However, at a hearing concerning a petition to assume jurisdiction, the child is not required to be present. Specifically, MCR 5.972(B)(1) provides that in preliminary proceedings, "[t]he child may be excused as the court determines the child's interests require." Similarly, a child is not required to be present at the dispositional phase. In this regard, MCR 5.973(3)(a) provides that a "child may be excused from the dispositional hearing as the interests of the child require provided that the child's guardian ad litem or attorney is present at the hearing." Thus, it is apparent that a court has discretion to exclude a child from child protection proceedings as the child's interests require. Under the circumstances, we are not persuaded that the family court abused its discretion in ordering the children sequestered.

In a largely incoherent argument in his brief on appeal, petitioner also argues that the family court erred in not allowing him to present additional evidence at the initial dispositional hearing concerning his petition to terminate respondent's parental rights. We disagree. Pursuant to MCR 5.97 1 (A), the family court was authorized to accept a plea of admission from respondent in order to acquire jurisdiction over the children. I, 248 Mich App

144, 176, n 43; 640 NW2d 262 (2001). Here, respondent entered a plea of admission to the relevant allegations in the petition, thereby alleviating the need for an adjudicative hearing on the petition. Id. Thus, contrary to petitioner's implied argument on appeal, the parties did not stipulate or improperly consent to the family court's assumption of jurisdiction. See, e.g., *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). Indeed, the court independently determined that respondent's admissions established factual support for a finding of jurisdiction.

Further, we reject petitioner's claim that his due process rights were violated because the family court did not conduct a full evidentiary hearing before determining that termination of respondent's parental rights was not warranted. The family court's decision to exclude evidence at a dispositional hearing is reviewed for an abuse of discretion. *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998). In the instant case the family court declined to allow petitioner to present testimony from the children regarding the allegations of physical abuse 9 in part because of respondent's admission of abuse. Because respondent admitted to the allegations in the petition, it was unnecessary to establish those allegations through a full hearing. See, e.g., "B, supra at 176, n 43. Indeed, we are satisfied that petitioner received due process because he was given ample opportunity to be heard "in a meaningful time and manner" by an impartial decisionmaker regarding his petition. *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000).

Finally, petitioner argues that the family court erred in denying his motion for rehearing of the court's decision not to hear further evidence and to

not terminate respondent's parental rights. Because petitioner did not support his rehearing motion with any new argument not previously. presented to the court, we are not persuaded that the court abused its discretion in denying petitioner's motion. MCR 5.992(A); *In re Toler*, supra at 478.

Affirmed.

1 The family court's July 20, 2001, order reflects that a dispositional hearing was scheduled for October 29, 200 However, a review of the July 16, 200 1, transcript indicates that the trial court began the dispositional phase after acquiring jurisdiction over the children on that date. It appears that petitioner initially filed a claim of appeal from the July 20, 200 1, order on October 5, 2001, in Docket No. 237079. On October 31, 2001, the family court entered an order dismissing its jurisdiction over the minor children. Further, during both the July 16, 2001, hearing and a hearing conducted on October 29, 2001, the family court concluded that termination of respondent's parental rights was not warranted. Petitioner's original claim of appeal was dismissed for lack of jurisdiction. *In re Yee Minors*, unpublished order of the Court of Appeals, issued November 29, 2001 (Docket No. 237079). Petitioner filed the claim of appeal in the present appeal on November 16, 200 1.

2 Moreover, we disagree with petitioner's contention that the plain language of MCR 5.974(D) imposed a duty on the trial court to conduct a full evidentiary hearing during the dispositional phase.

/s/ Richard A. Bandstra, /s/ Joel P. Hoekstra,

/s/ Pete--- D. O'Connell -3

IN THE MICHIGAN COURT OF APPEALS, ORDER Re: In re Yee Minors, Docket No. 237079, L.C. No. 01-009756-NA

Richard A. Bandstra, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(I0), 0),

orders:

The claim of appeal is DISMISSED for lack of jurisdiction because the July 20, 2001 order was not a final order at the time that the claim was filed. If an appellant files a motion for a new trial, reconsideration, rehearing, or similar postjudgment relief within 21 days of the entry of a final order, the finality of the order is suspended until the trial court denies that motion. An appeal as of right may then be claimed from the final order within 21 days after entry of the order denying the motion. See MCR 7.204(A)(1)(b). A claim of appeal that is filed before the entry of the denial order is a premature claim.

(sig) R.Bandstra, A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

(Seal State of Michigan Court of Appeals) Nov 29 2001

(sig)Sandra Schultz Mengel

Date Chief Clerk

Shiawassee County, 35th Circuit Cour, Family Division, Judge James R. Clatterbaugh #011953 110 E. Mack St., Corunna MI 48817

517 743-2211 Case # 01009756 NA

In the matter of: 1 Serge Yee 10/15/84

2 Sacha Yee 07/01/86; 3 Gabrielle Yee 03/31/89

William R. Yee, Petitioner/Father

Christine Roche', Respondant/Mother

Shiawassee County Prosecutor

Petition to Terminate Parental Rights: 1st Amended Petition pursuant to: MCL § 712A.19b; MSA § 27.3178(598.19b)

Philip L. Dulmage (P-13009), Attorney for Christine Roche, 2503 S. Linden Rd, Flint, MI 48532-5417, 810 733-2030

William R. Yee (P35984) pro se P. O. Box 310

Owosso. MI 48867-0310, 517 402-1620

Prosecuting Attorney's Office, 201 N. Shiawassee

Corunna, MI 48817, 517 723-2900 Fax 743-2237

Lynn D. Bowne, guardian ad litem, 114 East Main, Suite 215, Owosso, MI 48867, 517 743-2373

Putative Facts

1. Christine Roche' and William Yee were divorced on June 14, 1996 after making proofs on the record and after review of the tentative judgment of divorce by the Friend of the Court and Judge Lostracco. After expressing reservations regarding the terms of the judgment of divorce and

warning the parties to consult with additional attorneys Judge Lostracco did sign the judgment of divorce, (hereinafter "the judgment of divorce").

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2. The judgment of divorce did grant William Yee and Christine Roche' joint and equal legal and physical custody of their children, (hereinafter "the minor children"):

1. Serge Yee 10/15/84
2. Sacha Yee 07/01/86
3. Gabrielle Yee 03/31/89

3. Christine Roche' married Philip Dulmage on or about July 31, 1997. According to "the judgment of divorce" this marriage did

substantially reduce William R. Yee's support obligation to Christine Roche'.

4. Christine Roche'

a. either recruited Philip Dulmage to alienate William R. Yee from "the minor children" to facilitate a change in the terms of "the judgment of divorce";

b. or succumbed to Philip Dulmage's influence to aleinate William R. Yee from "the minor children" to facilitate a change in the terms of "the judgment of divorce".

The object was to obtain testimony from the children that would support a change in the terms of the support obligation in "the judgment of divorce" and undermine William Yee's credibility for the purpose of impeaching William Yee's testimony.

5. When William R. Yee was at 5281 Lake Drive, Owosso, Michigan 48867 (hereinafter 5281Lake Drive) Christine Roche' and Philip Dulmage (hereinafter "they") did start arguments in front of "the minor children" and then did accuse William R. Yee of abusive behavior. When William R. Yee avoided 5281 Lake Drive they did accuse William R. Yee of being abusive and neglecting the needs of "the minor children" to have a father. They did instill negative attitudes in "the minor children" towards William R. Yee. They did belittle William R. Yee's attempts to provide for the children. They did isolate the minor from William R. Yee's family and friends. They did attempt to instill false memories of abusive behavior and neglect in the minds of the children. As a result William R. Yee was compelled to stay away from 5281 Lake Drive and did miss many opportunities to spend time with the minor children. They did attempt to

persuade the minor children to permit Mr. Dulmage to adopt them. Finally, Philip Dulmage and Christine Roche' did verbally and physically abuse the minor children for the purpose of intimidation to obtain unconditional submission to extort false statements from "the minor children".

6. Christine Roche' and Philip Dulmage have made false allegations regarding coercion in the submission of "the judgment of divorce" and the subsequent modifications in order to impeach the credibility of William Yee.

7. The recommendations of the Shiawassee County Friend of the Court favoring Christine Roche' as the custodial parent are based upon false statements by Christine Roche' and involuntary statements made by the minor children while under the abusive coercion of Mr. Philip Dulmage and Christine Roche.

8. The statements of Christine Roche' and Philip Dulmage regarding the facts in this case may be impeached by review of a fraud perpetrated upon the Genesee County Circuit to obtain an annulment of their marriage. Judge Lostracco conducted a trial on December 17th, 1998, accepted testimony and evidence and denied Christine Roche' and Philip Dulmage an annulment based upon cohabitation from August of 1997 to April of 1998, case No. 98-2249-DM, see attached Exhibit A, parts of the transcript of the trial before Judge Lostracco. In February of 1999 Christine Roche' and Philip Dulmage obtained a fraudulent annulment from Judge Gadola in Genesee County after concealing the cohabitation from Judge Gadola, case No. 99-210505 DO, see attached Exhibit B, order of annulment of the marriage of Philip Dulmage to

Christine Roche'.

9. William R. Yee asserts that Christine Roche' and Philip Dulmage have conspired to physically, mentally, emotionally and financially abuse the minor children with the object of extorting money, property and custody of the minor children from William R. Yee through a consent modification of the judgment of divorce or a favorable judgment from Judge Lostracco and this court based upon multiple frauds upon the courts in Michigan.

10. On or about Thursday, July 27th, 2000 at 8:30 PM Christine Roche' did beat Gabrielle Roche' Yee with her hands, feet and a belt in front of Serge Roche' Yee and Sacha Roche' Yee with the object of intimidating "the minor children" into unquestionable submission to Christine Roche's and Philip Dulmage's strategy of having the minor children participate in the fraudulent allegations against William R. Yee as described above.

11. At 2:00 PM on Thursday, December 21st, 2000 Christine Roche' did stand before Judge Clarkson for sentencing. Christine Roche' did testify before sentencing that she did beat Gabrielle Roche' Yee with a belt on July 27th, 2000.

12. The minor children have resisted attempts by William R. Yee to talk to Christine Roche' with the object of reconciliation. They express fear that Christine Roche' will return and abuse them further. They express particular fear that if something happens to William R. Yee, Christine Roche' will be able to control their lives and further abuse them.

13. William R. Yee has legal and physical custody of the minor children.

Legal Arguments in support of Termination of

Christine Roche's Parental Rights

I: William R. Yee has standing

14. William R. Yee incorporates paragraphs 1 through 13 above and states that William R. Yee has legal and physical custody of the minor children and has standing to petition the court for termination of Christine Roche's parental rights under the rule of *In re Huisman*, 230 Mich App 372, 380-381; 584 NW2d 349 (1998):

> At the outset, we acknowledge that the comprehensive list of parties authorized to file a termination petition under § 19b(1) does not include the term "parent." However, given the Legislature's use of the apparently broad term "custodian" in § 19b(1), we can discern no statutory basis for excluding a custodial parent from filing a termination petition under the Juvenile Code to terminate the rights of the other natural parent.[3] The plain and ordinary meaning of "custodian" certainly encompasses a custodial parent, and none of the other Juvenile Code provisions appear to suggest otherwise[4] Nor are we aware of any provision in the Juvenile Code in which the Legislature ascribes a narrow or technical meaning to the term "custodian." In the absence of such

to construe {Mich. App. 381} "custodian" in a nonstrained, nontechnical manner and apply the statute as written. Barr, supra.

II: The Court Must Terminate Parental Rights

15. William R. Yee incorporates paragraphs 1 through 14 above and states that Christine Roche' has in fact physically, mentally, verbally, emotionally and financially abused "the minor children" within the meaning of MCL § 712A.19b; MSA § 27.3178(598.19b) and is likely to resume such abuse if allowed to exercise her parental rights. There is clear and convincing evidence to support termination of Christine Roche's parental rights to "the minor children" as contemplated by *In re Huisman*, 230

Mich App 372, 384; 584 NW2d 349 (1998):

III. Termination of Respondent's Parental Rights

Having determined that Mr. Huisman, as Justin's "custodian," had standing to file a termination petition under MCL 712A.19b(1); MSA 27.3178(598.19b)(1), we must now determine whether the juvenile court erred in terminating respondent's parental rights under MCL 712A.19b(3)(b)(i); MSA 27.3178(598.19b)(3)(b)(i) (physical injury caused by parent), MCL 712A.19b(3)(g);

MSA 27.3178(598.19b)(3)(g) (failure to provide proper care and custody and there exists no reasonable likelihood of change within a reasonable amount of time), MCL {N.W.2d 355} 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h) (imprisonment for more than two years), and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j) (reasonable likelihood of harm if child is returned to parent's home).

We review a trial court's decision regarding termination in its entirety for clear error. In re Hall-Smith, 222 Mich. App. 470, 473; 564 N.W.2d 156 (1997). Once a statutory ground for termination has been met by clear and convincing evidence, the parent against whom termination proceedings have been brought has the burden of going forward with some evidence that termination is clearly not in the child's best interest. Id. at 473. If no such showing is made and a statutory ground for termination has been established, the trial court is without discretion; it must terminate parental rights. Id. at 472.

At this time it is necessary and reasonable to terminate Christine Roche's parental rights to the minor children

Minor Children: Serge Roche' Yee DOB: 10-15-84,

Sacha Roche' Yee DOB: 07-01-86;

Gabrielle Roche' Yee DOB: 03-31-89.

16. William R. Yee does incorporate paragraphs 1 through 15 above. The children are entitled to a protective order pursuant to the rule of *Kampf v Kampf*, 237 Mich. App. 377, 603 N.W.2d 295 (App. Ct. 1999) 1999 Mich. App. Lexis 244

People v Pitts, 222 Mich. App. 260, 263; 564 N.W.2d 93 (1997). We disagree. There is no procedural due process defect in obtaining an emergency order of protection without notice to a respondent when the petition for the emergency protection order is supported by affidavits that demonstrate exigent circumstances justifying entry of an emergency order without prior notice, see, e.g., *Mitchell v WT* {Mich. App. 384} Grant, 416 U.S. 600; 94 S. Ct. 1895; 40 L. Ed. 2d 406 (1974), and where there are appropriate provisions for notice and an opportunity to be heard after the order is issued. See id.; *Gargagliano v Secretary of State*, 62 Mich. App. 1, 11; 233 N.W.2d 159 (1975). Here, subsection 12 permits a court to issue an ex parte order only if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued. [Emphasis added.]

RELIEF DEMANDED

17. William R. Yee demands that the court find that there was physical, mental, emotional and economic abuse of the children by Christine Roche. William R. Yee demands that the court find that it is in the best interests of the minor children for the parental rights of Christine Roche' to the minor children:

Minor Children: Serge Roche' Yee DOB: 10-15-84; Sacha Roche' Yee; DOB: 07-01-86; Gabrielle Roche' Yee DOB: 03-31-89

be terminated.

18. William R. Yee demands that this court grant an order that Christine Roche' may not visit, call, or

otherwise contact the minor children except by letters in the United States mail without the consent of the minor children as to time, place, and supervision by an adult or adults selected by the minor children. William R. Yee demands further relief as becomes necessary during the course of litigation that this petition will generate.

Proof of Service and Affidavit in Support of Petition.

William R. Yee asserts that all of the above is true to the best of his knowledge, information and belief. William R. Yee further asserts that this Petition, Proof of Service and Affidavit in Support of Petition were served upon Plaintiff Christine Roche', Lynn D. Bowne, guardian ad litem for the minor children and the Shiawassee Prosecutor by being placed into the United States Mail with the Postage paid in full on this date, March 8th, 2001, and addressed to:

Philip L. Dulmage (P-13009), Attorney for Christine Roche, 2503 S. Linden Rd, Flint, MI 48532-5417,

810 733-2030

Lynn D. Bowne, Guardian Ad. Litem, 114 East Main, Suite 215, Owosso, MI 48867, 517 723-2900, (sig),

(sig)William R. Yee (P35984) Subscribed and sworn to before me on this date, 3/8/2001 (sig) Notary, Printed Name, Notary, Shiawassee County Michigan, My Commission Expires (Date)

Michigan Supreme Court Lansing, Michigan, Elizabeth A. Weaver, Chief Justice, Michael F. Cavanagh, Marilyn Kelly, Clifford W. Taylor, Maura D. Corrigan, Robert P. Young, Jr., Stephen J. Markman, Justices; Order Entered: August 22, 2000, 116727; SC: 116727, COA: 220965, Shiawassee CC: 98-002249-DM

CHRISTINE ROCHE', Plaintiff-Appellee, v PHILIP DULMAGE, Defendant-Appellee, and

WILLIAM R. YEE, Intervenor/Appellant.

On order of the Court, the application for leave to appeal from the October 19, 1999 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

b0815 (SEAL OF THE MICHIGAN SUPREME

COURT - LANSING), I CORBIN R DAVIS, Clerk of the Michigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 22, 2000 (sig) Corbin R. Davis Clerk

8-22-200

Michigan Supreme Court Lansing, Michigan; Elizabeth A. Weaver, Chief Justice; Michael F. Cavanagh, Marilyn Kelly, Clifford W. Taylor, Maura D. Corrigan, Robert P. Young, Jr., Stephen J. Markman, Justices; SC: 117260; COA: 225478; Genesee CC: 99-210505-DO

Order Entered: December 27, 2000 117260

PHILIP DULMAGE, Plaintiff-Appellee, V CHRISTINE ROCHE', Defendant-Appellee, and WILLIAM R. YEE, Intervenor/Appellant.

On order of the Court, the application for leave to appeal from the July 5, 2000 decision of the Court of Appeals is considered, and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

K1219 (SEAL OF THE MICHIGAN SUPREME COURT - LANSING) I, CORBIN R. DAVIS, Clerk of the

Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 27, 2000 (sig) Jacqueline B. McKinnen

Deputy Clerk

SHIAWASSEE, FAMILY DIVISION

FILE #01009756-NA

IN THE MATTER OF: SERGE YEE, DOB: 10/15/1984; SACHAYEE, DOB: 7/01/1986

GABRIELLE YEE,DOB:3/31/1989

CASE MANAGEMENT ORDER

At a session of said Court, held in the Court House in the City of Corunna, said County and State, on the 2nd day of March, 2001.

PRESENT: HONORABLE JAMES R. CLATTERBAUGH (P-I 1953)

IT IS HEREBY ORDERED:

1) PETITION to be amended by March 8, 2001.

2) PRETRIAL: This case is scheduled for pre-trial on May 14, 2001 at 9:30 a.m. before Honorable James R. Clatterbaugh.

3) FORMAL TRIAL: Formal Trial is set for May 29, 2001 at 9:30 a.m.

4) PLEADINGS: All pleadings and motions (if any) shall be filed on or before March 20, 2001.

5) WITNESS AND EXHIBIT LIST: A witness and exhibit list setting forth the names and addresses of each parties' known witnesses, including experts, and identifying each exhibit must be furnished to the other party, as well as the Court, on or before March 20, 2001.

6) TRIAL BRIEFS/JURY INSTRUCTIONS: Any legal

authority which a party wishes the Court to consider shall be set forth in a trial brief which shall be provided to the Court three days prior to trial. If the matter is scheduled for a jury trial, written request for jury instructions and copies of any special non-standard instructions shall be submitted to the Court three days prior to trial. If either party objects to any of the provisions herein contained, they may file a motion to amend this Pre-Trial Order within fourteen (14) days from the date of entry of this Order.

Dated: March 2, 2001 (Sig) Hon. James R. Clatterbaugh (P-11953), Family Court Judge

STATE OF MICHIGAN, IN THE CIRCUIT COURT FOR THE COUNTY OF STATE OF MICHIGAN,JUDICIAL CIRCUIT, FAMILY, DIVISION, SHIAWASSEE COUNTY, CASE #01009756 CASE TYPE NA PAGE 1

ORDER FOR FORMAL TRIAL (CHILD PROTECTIVE PRCEEDINGS)

IN THE MATTER OF:

SERGE YEE, DOB:10/15/1984

SACHAYEE, DOB:7/01/1986

GABRIELLE YEE, DOB:3/31/1989

ORDER FOR FORMAL TRIAL, (CHILD PROTECTIVE PRCEEDINGS)

1. In the matter of :

1 SERGE YEE	10/15/1984
2 SACHA YEE	7/01/1986
3 GABRIELLE YEE	3/31/1989

Date of Hearing: July 16, 2001 Judge JAMES R.

CLATTERBAUGH P-11953

A Petition to Terminate Parental Rights has been filed in this matter and notice of Hearing on the Petition to Terminate Parental Rights has been given as directed by the Court.

That present at the Hearing were: Christine Roche, mother of minors; William R. Yee, father of minors; Lynn Bowne, C/A Counsel for minors; Robert Hoschner, Counsel for mother; Craig Weninger, Assistant Prosecuting Attorney

FINDINGS: Christine Roche would admit that she did plead guilty to a charge before Judge Clarkson as to paragraph 27 with regard to having struck, with her hand and a belt, Gabrielle Yee. This takes care of the statement made within paragraph 27 as to any involvement that she had. She does admit, and there are Court papers in District Court stating that she did in fact plead guilty to that.

In regard to paragraph 28 that she was sentenced on December 21st. She is on probation. Her probationary period will end on August 21, 2001.

As to paragraph 29, she would admit to the same as long as it reads that it is joint physical and legal custody of the minor children. Mr. Yee did not disagree. As to paragraph 31, it incorporates paragraphs 27, 28, and 29, all having been stipulated to at this point.

The Court will accept the stipulations to those provisions.

That the Court will accept jurisdiction of these children under these circumstances with those admissions.

That in regard to the request for termination of the mother's parental rights, the Court is going to find that the one incident of beating is not sufficient in and of itself to justify termination of the mother's rights.

That the Family Independence Agency was called, but they elected not to pursue it formally.

That the Court will take jurisdiction of the children and make them temporary wards of the Court.

That a worker will be assigned to supervise the children, either a Family Independence Agency worker or a Family Court worker.

STATE OF MICHIGAN,JUDICIAL CIRCUIT, FAMILY, DIVISION, SHIAWASSEE COUNTY, CASE #01009756 - NA PAGE 2

ORDER FOR FORMAL TRIAL (CHILD PROTECTIVE PRCEEDINGS)

1. In the matter of SERGE YEE Birthdate: 10/15/84; SACHA YEE Birthdate: 07/01/86; GABRIELLE YEE Birthdate: 03/31/89

FINDINGS Cont'd:

That visitation between the children and Christine Roche will be prohibited until the children feel that they are ready. The Court is going to keep the children safe. That if something happens to William Yee. The children would be placed with a relative of his. That the Circuit Court Order denying visitation in regard to Gabrielle with Christine Roche will be adopted by this Court until further Order of this Court.

That the mother may have visitation with Serge and Sacha supervised by a neutral party or father.

IT IS ORDERED:

That the Court will continue the children as temporary wards of the Court in the care and custody of their father, William Yee.

That Dispositional Hearing in this matter is set for October

9, 2001 at 9:00 a.m.

That Christine Roche will have no contact with Gabrielle Yee.

That Serge and Sacha will have the right to communicate by telephone with their mother and/or have contact, with them picking someone to supervise and be present if they so desire.

That this Order will stand even if the probation order expires in District Court in August, at least until Dispositional Hearing.

Date: 7-20-2001, (Sig) Judge James R. Clatterbaugh (P-11953).

Shiawassee County, District Court, Family Division, (Probate Court), Judge James R. Clatterbaugh, 517 743-2211, 110 E. Mack St., Corunna MI 48817

Case # 01-009756-NA In the matter of: 1 Serge Yee 10/15/84; 2 Sacha Yee 07/01/86; 3 Gabrielle Yee 03/31/89, Plaintiff; William R. Yee, Petitioner/Father/Appellant; Christine Roche', Respondant/Mother/Appellee

Shiawassee County Prosecutor/Appellee

William R. Yee (P35984) pro se, P. O. Box 310, Owosso. MI 48867-0310, 517 214-6196

Lynn D. Bowne, Guardian Ad. Litem, 201 N. Shiawassee, Fl 2, 114 East Main, Suite 215, Owosso, MI 48867 517 723-2900

Robert H. Hoschner P15140, Attorney for Christine Roche, 1st Floor Hoschner Building, 149 East Corunna Ave., Corunna, MI 48817

517 743-3030, 743-5065

Craig F. Wininger P57058, Prosecutor's Office, Corunna, MI 48817-1437, 517 743-2373, Fax 743-2237

Order Denying Motion for Rehearing on The Matter of Further Evidentiary Hearing on the Matter of Jurisdiction and Termination of Christine Roche's Parental Rights

On this date, October 29th, 2001, this court, having considered the briefs and oral arguments of the parties, and for reasons stated on the record, does deny petitioner William R. Yee's motion for reconsideration on the: Matter of Jurisdiction and Termination of Christine Roche's Parental Rights

(sig) Judge James R. Clatterbaugh, October 29th , 2001

STATE OF MICHIGAN, JUDICIAL CIRCUIT, FAMILY, DIVISION, SHIAWASSEE COUNTY, CASE #01009756 CASE TYPE NA PAGE 1 ORDER FOR HEARING ON MOTION FOR RECONSIDERATION (CHILD PROTECTIVE PRCEEDINGS)

1. IN THE MATTER OF: SERGE YEE, 10/15/1984; SACHA YEE, 7/01/1986; GABRIELLE YEE, 3/31/1989;

Date of hearing: October 29, 2001 Judge JAMES R. CLATITERBAUGH P-11953

A motion for reconsideration has been filed in this matter and notice of hearing on the Motion for Reconsideration has been given as directed by the Court.

That present at the hearing were:

Christine Roche' mother of minors;

William Yee, father of the minors

Lynn Bowne, C/A Counsel for the minors

Robert Hoschner, C/A Counsel for the mother;
Craig Wininger, Assistant Prosecuting Attorney
Findings:
That there is no question the Ms. Roche abused he one child and took her punishment in District Court.
It appears to this Court that this is just a vindictive method of trying to make a point of I don't know what. Mr. Yee expresses his great concern that he wants to terminate because he could die and e does not want her to have a right to come and get the children. That is not grounds for termination.
That the Court made a finding at the last hearing hat one incident that Ms. Roche' had pled to was not sufficient to find legal justification to terminate parental rights to these three children.
The Court finds that there is no new grounds to proceed with the termination petition.
IT IS ORDERED:
That the Motion for Reconsideration is denied.
10-31-2001, (Sig) Judge James R. Clatterbaugh (P-11953).
Date
JC22 (9/97) DOCUMENT #5

STATE OF MICHIGAN, JUDICIAL CIRCUIT, FAMILY, DIVISION, SHIAWASSEE COUNTY, CASE #01009756 CASE TYPE NA PAGE 1
ORDER OF DISPOSITION, CHILD IN HOME (CHILD

PROTECTIVE PRCEEDINGS)

1. IN THE MATTER OF: (name(s), date of birth) SERGE YEE, DOB:10/15/1984; SACHA YEE, DOB:7/01/1986; GABRIELLE YEE, DOB:3/31/1989;

2. Date of hearing: 10/31/01 Judge/Ref.: JAMES R. CLATI'ERBAUGH 11953

3. An adjudication was held and the child(ren) were found to come under the jurisdiction of the court.

4. Notice of hearing for the disposition was given as required by law.

5. The court has considered the case service plan and evidence presented. Specific findings of fact and law regarding this proceeding have been made on the record.

THE COURT FINDS:

(}6. Parenting time by even if supervised, would be harmful to the child(ren).

That the Court is going to dismiss the jurisdiction of the Court and let Mr. Yee appeal to a higher court and do as he wishes.

That Court will not continue jurisdiction in this matter and will not proceed to hear issues with the children. They are old enough, they are protected in Mr. Yee's care and custody, and there is no jurisdiction for this Court to be involved at this time in their care.

IT IS ORDERED:

That the Court will dismiss this matter with prejudice, effective immediately.

Date: 10-31-2001, (Sig) Judge James R. Clatterbaugh (P-11953).

Petitioner's Motion for Reconsideration

1. Wiilliam R. Yee has reason to believe that Christine

Roche did in fact abuse the Minor Children:

Serge Roche' Yee	DOB: 10-15-84
Sacha Roche' Yee	DOB: 07-01-86
Gabrielle Roche' Yee	DOB: 03-31-89

Hereinafter these three children will be refereed to as "the minor children".

2. William R. Yee has reason to believe that Christine Roche' started abusing the minor children before the divorce between William R. Yee and Christine Roche (also known as Christine Yee and Christine Dulmage) was granted in June of 1996, Affidavit Exhibit A, Pages 1-4.

3. William R. Yee has reason to believe that the object of the abuse was to coerce and frighten the minor children into testifying in support of Christine Roche's demands for custody, and for child support and for alimony.

4. Mr. Philip Dulmage was William R. Yee's attorney, in the winter of 1997 before he met Christine Roche in the spring of 1997. Mr. Dulmage was retained to protect William R. Yee's quiet enjoyment of 5281 Lake Drive, Owosso, MI 48867, Affidavit Exhibit C, Page 11.

5. Mr. Dulmage did in fact marry Christine Roche' on or about July 31st

1997, attached Exhibit C, Page 26.

6. Philip Dulmage did in fact abuse William R. Yee by representing Christine Roche in divorce proceedings after representing William R. Yee in several cases involving the property known as 5281 Lake Drive, Owosso, MI 48867, Affidavit Exhibit B, Pages 1-4, Affidavit Exhibit C, Page 11, Affidavit Exhibit D, Page 1, Affidavit Exhibit C, Page 24, Affidavit Exhibit C, Page 39-40; Affidavit Exhibit L, Page 1.

7. William R. Yee has reason to believe that the abuse of the minor children was in fact compounded by Mr. Philip L. Dulmage's abuse of the minor children and William R. Yee, Affidavit Exhibit C, Page 11.

8. William R. Yee has reason to believe that Mr. Philip Dulmage and Christine Roche' did in fact abuse the minor children with the object of coercing them into consenting to:

A. Mr. Philip Dulmage adopting the minor children;

B. Mr. Philip Dulmage living at 5281 Lake Drive in opposition to the terms of the consent judgment of divorce that only permitted William R. Yee, Christine Roche' and the minor children living at 5281 Lake Drive, Owosso, MI 48967;

C. Not having William R. Yee live at 5281 Lake Drive, Owosso, Michigan 48867 as permitted by

the terms of the consent judgment of divorce;

D. Terminating William R. Yee's parental rights by having Philip Dulmage adopting the minor children;

E. False testimony regarding William R. Yee's conduct in support of claims by Christine Roche' for money and restriction of William R. Yee's parental rights.

9. William R. Yee has reason to believe that the Mr. Philip Dulmage did in fact live at 5281 Lake Drive, Owosso, MI 48867 with Christine Roche' from July of 1997 to about May or June of 1998 as Christine Roche's husband and as the step father of the minor children, Affidavit Exhibit C, Page 35-38.

10. Mr. Philip Dulmage and Christine Roche did in fact forbid William R. ee from visiting the minor children at 5281 Lake Drive, Owosso, MI 48867 at times from July 31, 1997 until July 27, 1999, Affidavit Exhibit K, Page

2-3.

11. Mr. Philip Dulmage and Christine Roche have in fact threatened William R. Yee at 5281 Lake Drive, Owosso, MI 48867 at times from July 31, 1997 until July 27,1999, Affidavit Exhibit K, Page 2-3.

12. Mr. Philip Dulmage and Christine Roche have in fact interfered with William R. Yee's parenting time with the minor children at times from July 31, 1997 until July 27, 1999, Affidavit Exhibit K, Page 2-3; Affidavit Exhibit L, Page 1.

13. William R. Yee has reason to believe that Mr. Philip Dulmage and Christine Roche' did in fact attempt to perpetrate a fraud upon the courts by obtaining an annulment of their marriage, which is not permitted by the laws of this state, Affidavit Exhibit C, Pages 44-52.

14. Judge Lostracco did in fact conduct a trial and determine that Christine Roche' and Philip Dulmage could not obtain an annulment of their marriage, Affidavit Exhibit C, in its entirety. The specific facts which do not permit an annulment are recited in Affidavit Exhibit C, Pages 44-52.

15. Judge Lostracco did in fact determine that Philip Dulmage and Christine Roche' were sophisticated in the laws of divorce and annulment:

Both parties here are sophisticated, Ms. Roche', Mr. Dulmage. That's clear from not only the testimony but the Pleadings. And I think that based on not only that sophistication, but also their course of conduct, once full knowledge is gained, that if there was fraud, let's assume it was fraud to start with, that acted as an inducement to the marriage, that certainly rather quickly into the marriage was removed and no longer become a ground for any

subsequent annulment attempt. See Affidavit Exhibit C, Pages 51-52.

16. Judge Lostracco did in fact determine that Christine Roche' had a mental illness that did no(require medication on December 17th, 1998, but had required only a sleeping pill in the past and was not in any way a detriment to her representing herself in an action for annulment and divorce:

Question: And are you - based on what you've said earlier before you were put under oath, Ms. Roche', I don't mean any disrespect, but are you on any form of medication?

Answer Not currently, no.

.....

Question: All right. And how long have you been seeing a psychiatrists?

Answer: For about five months. Question: Who are you seeing? Answer: Lynn Hughes.

Question: And are you treating with him? Answer: Her.

Question: Are you treating with her? Answer: Yes.

Question: And where is Dr. Hudghes situated?

Answer: She's at the PACE Plus, and it's North - North M-52. I don't know the rest of the address.

Question: She's a psychiatrist or a psychologist? Answer: Psychiatrist.

Question: And has she prescribed any medication? Answer: Medication so I can sleep at night.

Question: But other than that, nothing?

Answer: No.

Question: And so are you able to follow these proceedings today? Answer: I have no problem comprehending -

Question: All right.

Answer: -- with the proceedings.

Question, So as the result of the treatment, any condition, any medication, you're not having any problem comprehending what's going on here?

Answer: No, I'm not. See Affidavit Exhibit C, Pages 28-29

17. Judge Lostracco did in fact deny an annulment of the marriage of Christine Roche' to Philip Dulmage, Affidavit Exhibit C, Page 52.

18. Mr. Philip Dulmage and Christine Roche' did in fact perpetrate a fraud upon Judge Gadola in the 7'" Circuit Court by obtaining an annulment of their marriage after Judge Lostracco did determine that the), could not obtain a lawful annulment of their marriage under the laws of the state of Michigan, Affidavit Exhibit E, Pages 1-2.

19. William R. Yee has reason to believe that on

or about July 27th, 1999 at 8:30 PM Christine Roche' did in fact cause physical and emotional injury to the three minor children by beating Gabrielle Yee in front of Serge Yee and Sacha Yee

at 5281 Lake Drive, Owosso, MI 48867, Exhibit H, Pages 1-3.

20. William R. Yee has reason to believe that Christine Roche' did in fact beat Gabrielle Yee to

obtain absolute submission for the purpose of coercing testimony advancing her claims for money and property from William R. Yee, Affidavit Exhibit H, Pages 1-3.

21. William R. Yee has reason to believe that Christine Roche' did in fact beat Gabrielle Yee in front of Serge Yee and Sacha Yee to intimidate Serge and Sacha into obtain absolute submission for the purpose of coercing testimony advancing her claims for money and property from

William R. Yee, Affidavit Exhibit 11, Pages 1-3.

22. It is a matter of public record that Christine Roche' was charged with 1st degree child abuse for assaulting Gabrielle Roche' Yee on Thursday, July 27th, 2000, Affidavit Exhibit F, Pages 1-2.

23. It is a matter of public record that Christine Roche' was convicted of physically abusing Gabrielle Yee on or about July 27th, 1999, Affidavit Exhibit G, Page 1.

24. Because Christine Roche' abused the minor children and assaulted Gabrielle Yee, William R. Yee was compelled to provide care for the minor children as a single parent.

25. Because Christine Roche' abused the minor children and assaulted Gabrielle Yee, William R. Yee was compelled to resign his position as medical director in Warsaw Indiana and accept a position as apsychiatrist in Michigan with a reduction in wages and status.

26. William R. Yee now lives at 5281 Lake Drive, Owosso, MI 48867 with the minor children.

27. William R. Yee has reason to believe that the minor children do not want Christine Roche' to be their mother and they want her parental rights terminated because they have reason to believe that if William R. Yee dies or is disabled Christine Roche' will acquire custody and abuse them further.

28. The minor children are now subject to an action before Judge James R. Clatterbaugh on the issue of terminating Christine Roche's parental rights.

29. William R. Yee has reason to believe that the children's best interests are served by permitting a complete evidentiary hearing with Petitioner William R. Yee and Guardian ad litem Lynn D. Bowne submitting

testimony and evidence before the court makes a determination upon jurisdiction and termination of Christine Roche's parental rights to the minor children.

30. William R. Yee has reason to believe that the children's best interests are served by terminating Christine Roche's parental rights and prohibiting any contact with Christine Roche' except for visitation at the discretion of the minor children with the chaperoning chosen by the minor children.

31. William R. Yee has reason to believe that if Petitioner's the court permits Petitioner William R. Yee or the guardian ad litem Lynn Bowne to submit testimony and other evidence the court will conclude that it is in fact compelled to termination Christine Roche's parental rights pursuant to MCR 5.974

> (D) Termination of Parental Rights at the Initial Disposition. The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 5.973(A), and shall order that additional efforts for reunification of the child with the respondent shall not be made, if
>
> (1) the original, or amended, petition contains a request for termination;
>
> (2) the trier of fact found by a preponderance of the evidence that the child comes under the jurisdiction of the court on the basis of MCL 712A.2(b);MSA 7.3178(598.2)(b);
>
> (3) the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction, that one or more facts alleged in the petition
>
> (a) are true, (b) justify terminating parental rights at the initial dispositional hearing, and (c) fall under MCL 712A.19b(3); MSA 27.3178(598.19b)(3);
>
> (4) unless the court finds, in accordance with the rules of evidence as provided in subrule (F)(2), that termination of parental rights is clearly not in the best interest of the child.

32. William R. Yee has reason to believe that the children's best interests are served by an order making William R. Yee the exclusive guardian and custodial parent until the matter of the parental rights is resolved.

33. William R. Yee has reason to believe that Christine Roche' is in fact keeping her address a secret to avoid service of legal documents such as motions and claims to appeal.

34. This court did in fact order the submission of an amended petition on March 2, 2001, Exhibit 1, Page 1.

35. Petitioner did in fact submit an amended petition on March 2nd , 2001, Exhibit 2, Page 3.

36. At a hearing on 10-29-2001 Judge Clatterbaugh did in fact determine that the petitioner's motion for reconsideration was properly denied and that the case was properly dismissed with prejudice, Exhibit 3, Page 1, Motion for Reconsideration 11-5-2001.

37. At a hearing on 10-29-2001 Judge Clatterbaugh did in fact determine that the case was properly dismissed with prejudice, Exhibit 4, Page 1, Motion for Reconsideration 11-5-2001.

38. There was no meaningful evidentiary hearing as Contemplated by MCR 5.974 .....

as the trial judge did in fact accept stipulation to the conditions of jurisdiction as the point at which the court rules required termination of the evidentiary hearing.

39. The result was that in fact all of the judge's findings and rulings were based upon the pleadings and stipulations by the respondant to the petition with no evidentiary hearing of significance.

40. Petitioner has reason to believe that there was a denial of due process right to an evidentiary hearing under applicable state and federal statutes.

41. Petitioner has reason to believe that a reasonable fact finder would consider the materials in the supporting affidavit as compelling the conclusion that Christine Roche' did in fact engage in a protracted and calculated course of abuse of the minor children. This abuse transpired despite a protracted course of psychiatric treatment and medication and counseling. This abuse was intentional, premeditated and of such a persistent nature that a reasonable fact finder would be compelled to conclude that it would not in any reasonable probability remit The reasonable fact finder would be' compelled to conclude under the circumstances that it was not a single beating but part of a protracted course of intimidation and abuse, see Affidavit Exhibit 11, Pages 1-3. The reasonable fact finder would in fact determine beyond a reasonable doubt that it was and is in the best interest of the minor children to terminate respondent Christine Roche's parental rights.

42. Petitioner has reason to believe that an evidentiary hearing with admission of the evidence referred to in the affidavit in support of this reconsideration could compel the court to recant its orders and retain jurisdiction in this case and order a rehearing on the amended petition to terminate Christine Roche's parental rights according to the best interests of the minor children in controversy.

Arguments of Law

43. Petitioner asserts that both Michigan and Federal law requires due process in the notice and hearing equirements for termination of parental rights See *In Re 0. E. S.*, 246 Mich. App. 212, 221; 631 N.W.2d 353 (2001).

Both the federal and state constitutions guarantee the right to the due process of law and equal protection under the law. US Const, Am XIV; Const 1963, art 1, § 2. Respondent claims that the Adoption Code fails to afford the requisite protection to fathers, such as himself, who would have established a custodial, financial, or personal relationship with the adoptee had it not been for circumstances beyond their control.

The United States Supreme Court has held that the father of an illegitimate Child, who has taken steps to establish a custodial or supportive relationship with the child has a constitutionally protected interest in {Mich. App. 222} continuing that relationship. *Caban v Mohammed*, 441 U.S. 380; 99 S. Ct 1760; 60 L. Ed. 2d 297 (1979); *Stanley v Illinois*, 405 U.S. 645; 92 S. Ct. 1208; 31 L. Ed. 2d 551 (1972). Accordingly, the Due Process and Equal Protection Clauses bar the state from terminating the parental rights of the father of an illegitimate child without the same showing of unfitness that would be necessary to terminate tile rights of a mother or a married father. *Caban, 441 U.S.* at 392-394; *Stanley*, 405 U.S. at 658. However, where the father of an illegitimate child has not taken steps to establish a custodial or supportive relationship, the state may constitutionally terminate his parental rights through procedures and standards that are less stringent than those required to terminate the parental rights of a mother or a

married father. *Lehr v Robertson,* 463 U.S. 248, 267-268; 103 S. Ct. 2985; 77 L. Ed. 2d 614 (1983); *Quilloin v Walcott,* 434 U.S. 246, 255-256; 98 S. Ct. 549; 54 L. Ed. 2d 511 (1978).

44. The trial court did grant jurisdiction upon stipulation of respondent Christine Roche' and upon objection of the prosecutor did terminate the evidentiary hearing upon the logic that determination of termination of parental rights could only he based upon evidence sufficient to establish jurisdiction. This had the effect of preventing petitioner from presenting evidence that it was in fact in the best interests of the minor children to terminate respondent Christine Roche's

parental rights. Preventing petitioner from presenting evidence that would prove that it was in the best interest of the minor children to terminate parental rights does in fact violate petitioner's due process right to all evidentiary hearing as contemplated by *Familly Independence Agency v Jones* (in re Pap) (App. Ct. 2001):

On appeal, the mother argues that the trial court's exercise of jurisdiction over the minor child and termination of her parental rights based upon a grant of summary disposition

violated her right to procedural due process.3 ..... In re *RFF,* 242 Mich. App. 188, 204; 617 N.W.2d 745 (2000); In *re Lang,* 236 Mich. App. 129, 135; 600 N.W.2d 646 (1999). The interpretation and application of court rules are questions of law which we review de novo. *In re Contempt of Tanksley,* 243 Mich. App. 123,

127; 621 N.W.2d 229 (2000). Likewise, to the extent that resolution of this issue implicates constitutional due process concerns, our review is de novo. *In re Carey,* 241 Mich. App. 222, 225-226; 615 N.W.2d 742 (2000).

> In child protective proceedings, the trial court must first determine whether it may exercise jurisdiction over the child. *In re Brock, 442* Mich. 101, 108; 499 N.W.2d 752 (1993). "To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2[.]" Id. at 108-109; MCR 5.972(C)(1).

45. Petitioner asserts that the court rules contemplate admission of as much evidence as petitioner deems necessary to prove that it is a matter of fact that jurisdiction rests in the court and there is sufficient evidence too support a judgment that it is in fact in the best interest of the minor children to terminate Christine Roche's parental rights. The petitioner may rest his case before sufficient evidence is presented to justify termination the respondent's parental rights. But it must be an abuse of the trial court's discretion to stop the admission of evidence before the petitioner rests his case and before there is sufficient evidence to support jurisdiction and termination of respondent's parental rights. See MCR 5.974

> (D) ... The court shall order termination of the parental rights of a respondent .... pursuant to MCR 5.973(A), ... e, if (1) the original, or amended, petition contains a request for termination; (2) the trier of fact found by a preponderance of the evidence that the child comes under the jurisdiction of the court ... of MCL 712A.2(b); MSA 27.3178(598.2)(b); (3) the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, ... that one or more facts alleged in the petition: (a) are true,

(b) justify terminating parental rights ....., and

(c) fall under MCL 712A.19b(3); MSA 27.3178(598.19b)(3);

(4) unless .. (F, 2), that termination of parental rights is clearly not in the best interest of the child.

46. Petitioner asserts that as there was not a meaningful evidentiary hearing there can be no basis in law or fact for the trial judge's findings and orders as articulated in the order denying the Motion for Reconsideration signed on 10-31-2001, see Exhibit 3, Page 1, Motion for Reconsideration 11-5-2001.

47. Petitioner asserts that as there was not a meaningful evidentiary hearing there can he no basis in law or fact for the trial judge's findings and orders as articulated in the order dismissing this matter with prejudice, effective immediately, signed on 10-31-2001, see Exhibit 4, Page 1, Motion for Reconsideration 11-5-2001.

48. Petitioner believes there may have been a typographical error on the order dismissing this matter with prejudice, effective immediately, signed on 10-31-2001, see Exhibit 4, Page 1, Motion for Reconsideration 11-5 2001. Petitioner believes that tile hearing was actually held on Monday October 29th , 2001. If in fact there was an evidentiary hearing on Wednesday, October 31st, Petitioner was not served with notice and there has been a gross denial of due process that petitioner herewith strenuously objects to.

49. Petitioner believes that upon review of the affidavit in support of this motion the trial court will be compelled to retain jurisdiction, order further evidentiary, hearings, and determine that it is in fact in the best interest of the minor children to have Christine Roche's parental rights terminated.

Relief Demanded

50. Petitioner demands that the trial court rescind the orders denying reconsideration and order a jury trial on the issue of terminating the parental rights of respondent Christine Roche'.

51. Petitioner demands that the trial court rescind the order dismissing the matter with prejudice and re-institute all the orders of July 20, 2001 including but not limited to prohibiting visitation between the minor children and respondent Christine Roche' until all action in this case and all appeals in this case are resolved upon final appeal.

52. Order the Respondent Christine Roche to serve upon Petitioner William R. Yee Respondant Christine Roche's address and phone number so that service of legal process on appeal and other matters may he made according the Michigan Court Rules. And if Respondent changes here address and phone number during the time of any further action or appeal all changes of address shall also be served upon Petitioner William R. Yee until this case is brought to a final conclusion.

William R. Yee asserts that all of the above is true to the best of his knowledge, information and belief.

(sig) W. R. Yee_____

William R. Yee P35984

P. 0. Box 310, Owosso MI 48867 517 214-6196

Subscribed and sworn to before me on this day *Nov. 01,

(sig) Sheila K. Stone notary public, SHIAWASSEE, County, Michigan.

(SIG)SHEILA K STONE,

SHEILA K STONE

Printed Name, my Commission Expires, 8-7-05.

STATE OF MICHIGAN IN THE PROBATE COURT FOR THE COUNTY OF SHIAWASSE File: 01-009756-NA; in the Matter of: SERGE YEE, SACHA YEE, GABRIELLE YEE, Minors

PETITION FOR TERMINATTCN OF

PARENTAL RIGHTS BEFORE HONORABLE

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Petitioner's Appendix Page 51

JAMES R. CLATTERBAUGH, PROBATE JUDGE Corunna, Michigan 48217 - July 16, 2001

APPEARANCES: For the People: CRAIG WININGER (P57058), Assistant Prosecuting Attorney, 310 North Shiawassee, Corunna, Michigan 49817(517) 743-2373;

For the Minors:

LYNNE D. BOWNE (P25976), 114 East Main Street, Owosso, Michigan 48867 (517)723-2900

For the Mother: ROBERT HOSCHNER (P15140) 149 East Corunna Avenue, Corunna, Michigan 48817 (517) 743-3030

WILLIAM YEE (P35984), In pro per:

915 East Oliver Street, Owosso, Michigan 48867-0310 (219) 267-6199

Transcribed by: Jennette M. Sawyer, CER 5088 (317) 230-8360 4

THE COURT: All right.

MR. YEE: I would object to that motion. I would request

that the Judge ask the children what their preference is before it makes a ruling because I believe that the children have an interest in observing the transactions and having a better understanding of what's actually happening. If they say they don't want to watch I have no objection to them being sequestered. But if they say that they want to watch then I have a strenuous objection because I do not want to raise them to be sheep to be told what to do. I want to raise them to take an active control of their life.

THE COURT: That's a motion that this Court grants routinely and automatically. The children--the witnesses will be sequestered.

MR. HOSCHNER: Your Honor, if they don't want to testify

THE COURT: They can stay.

MR. HOSCHNER: --they can stay.

THE COURT: Yeah, if they don't want to testify they can sit there and watch.

MR. YEE: They are parties to the action. They have an attorney representing them. As parties they should have the right to stay. And that right should--to sequester them before asking them on the record if they want to observe the proceedings and why they want to observe the proceedings I

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think would be a great violation of their rights. They have rights.

THE COURT: If they are witnesses and he wants then to be sequestered the sequestration rule is very clear, they can not be here listening to testimony and then testify to

substantiate something. That's the purpose of the rule.

MR. YEE: But the parties have a right to attend.

THE COURT: They are not parties.

MR. YEE: They are parties.

THE COURT: They are not parties period.

Established. The three children will have to wait in the hallway unless you want to call one of them right away. Are there any other motions?

MR. HOSCHNER: Yes, your Honor. I would, for the record, state that as to paragraph 27, my client, Christine Roche, would admit that she did in fact plead guilty to a charge before Judge Clarkston with regards to having struck, with her hand and a belt, Gabrielle Yee, which I believe takes care of the statement made within paragraph 27 as to any involvement that she had. She does admit and there is – (inaudible - loud coughing)--in the district court stating that she did in fact plead guilty to that.

THE COURT: Okay.

MR. HOSCHNER: That further with regards to paragraph 28 that she was in fact sentenced on December 21st. She is on

three paragraphs. And as to paragraph 34, that's a where forth paragraph

MR. YEE: I think that the pleadings are designed to provide the criteria and basis for a claim, but that the hearing, the evidentiary hearing, is necessary to make –

THE COURT: Well, it is to go on –

MR. YEE: --on the record the full extent of the abuse.

THE COURT: We do need a hearing. I mean, we need the hearing to establish the dispositional phase and the best interest phase.

MR. WININGER: It does seem as if through admission Jurisdiction can be taken almost on it's admission and we can move right to the dispositional phase.

THE COURT: Right.

MR. BOWNE: I agree, your Honor.

THE COURT: Okay. So any other motions?

MR. HOSCHNER; No, your Honor.

THE COURT: Okay. We will accept the stipulations to those provisions and then go right to the--actually we're jumping right
to disposition.

MR. HOSCHNER: Yes, your Honor.

THE WITNESS: So the Court made the--

THE COURT: The Court will accept jurisdiction of

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these children under the circumstances with those admissions. But we still need to make a decision whether or not there is grounds for termination.

HOSCHNER: Yes, your Honor. I just wanted to make sure we –

THE COURT: Okay. All right. At this point then, whichever child is going to testify first can stay. I assume you're starting with the children, or do you have other witnesses?

MR. YEE: I am going to start with Christine.

THE COURT: Okay. Then all three children will have to wait in the hallway.

(Courtroom doors opening and closing)

THE COURT: Step up and raise your right hand. You

can come over here.

THE COURT RECORDER: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. ROCHE: I do.

THE COURT: You may proceed.

CHRISTINE ROCHE

called as a witness at 10:04 a.m., sworn by the Court recorder, testified:

DIRECT EXAMINATION

BY MR. YEE:

For the record will you state your name in full?

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A My name is Christine Marie Roche.

Q Is it okay if I question her from the desk?

THE COURT: Sure. Sure.

BY MR. YEE:

Q You can hear me? How old are you?

A Thirty-five.

Q And what is your birthdate?

A 12/4/65.

Q Where were you born and raised?

A Canton, Ohio.

Q Who are your parents?

MR. HOSCHNER: Your Honor, I am qoing to object to this line of questioning. This has nothing to do with dispositional stage of this particular matter.

MR. YEE: It has to do with her fitness as a parent. And in order to demonstrate her fitness as a parent, the Court

needs to know her as a person. And nowing where she comes from, her education, what she knows and doesn't know, what her family experiences are, and how those family experiences applied to her child rearing and her attitudes toward child rearing is all very necessary because we're looking at her prognosis for being a parent in the future So in order to know her prognosis you have to understand her as a person, and that means her developmental history, and what her experiences are in regards to family matters, what she considers right: and

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Q When did you see Doctor Lopez for the first time?

A I don't recall. I do not recall.

Q The best guess? Give me your best guess as to what year?

MR. HOSCHNER: Your Honor, she says she does not recall.

MR. YEE: But she can give an estimate. She can give a guess.

THE COURT: She should be able to pick a year.

THE WITNESS: Oh, let's see-

MR. WININGER: Your Honor, I have a question on what we're doing here. And I don't know if right now is the appropriate time to bring it. We are here on a petition for jurisdiction, as well as termination in the initial dispositional hearing. The Court has accepted jurisdiction based on the admission of mom.

THE COURT: Right

THE WITNESS: Now, my recollection, based on when the Prosecutor's office has acted as the petitioner, is that a

petition of the initial dispo requires that I not put on any additional evidence. The petitioner is not permitted to put on additional evidence for term-nation at that time. The Court needs to make it's decision based upon the evidence that. it heard for jurisdiction. That evidence is the admission of mom that we've already heard. The Court took jurisdiction on that. The petitioner is not permitted to put on any

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additional. And I apologize for bringing this up here 15 minutes after the examination has begun, but in our role reversal here, and if the Court recalls as I do, and I can cite the court rule. The petitioner, when you request termination at the initial disposition, and I will read here, the Court finds on the basis of clear and convincing, legally admissible evidence introduced at: the trial or plea proceeding, that one or more of the facts that lead to the petition justify terminating parental rights at the dispositional hearing. The petitioner is not permitted to put on additional termination proofs at that dispositional hearing. Now, certainly the respondent would be able, it he felt the need, to put on proofs to counter the termination, but the petitioner is not allowed to put on additional. termination proofs. If the Court finds there is a basis for termination, the petitioner can put on best interest proofs, but the petitioner is specifically precluded from putting on additional termination proofs.

MR. HOSCHNER: And I would have to agree, your Honor. And I have allowed some because --to be honest with you I've never

THE COURT: So how do we get to the best interest then?

MR. WININGER: Well, the what Court--pursuant to the court rule what the Court would ...

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THE COURT: Well, let me short circuit this real quick. Does anybody have any problems -with me interviewing the children privately, one at a time?

MR. BOWNE: I would urge it, your Honor.

MR. YEE: I would object if that's--if that interview--if that interview were to pre-empt an evidentiary hearing, and the decision was based simply on their statements for this reason; they lack the capacity to present the evidence necessary. They can tell you what their feelings are, and they can tell you what they want, but they can not provide, in an adequate fashion, the evidence that this Court needs to terminate the parental rights. So what the Court will get, is an unsophisticated and naive statement as to what their wishes are. But--and that's why I wanted them to sit and hear what was going on so that they could become more sophisticated and understand more clearly what's actually going on here. Now, what the state is advocating, is that the evidentiary hearing that justifies and requires the Court to terminate the parental rights be bypassed by a I misinterpretation of a rule of procedure. Now, what he's presenting to you is a rule that once the Court's made a determination that the events happened that

compels the Court to terminate parental rights,

then there is no more evidence. Well, 1 don't have a problem with that, but the Court has not

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court needs to make it's termination finding. It's statutory

basis finding on the record it has in front of it.

MR. HOSCHNER: Right. Your Honor--

MR. YEE: (inaudible - too low)--.

MR. HOSCHNER: Mr. Yee, may I speak?

MR. YEE: Sure.

MR. HOSCHNER: You've had your opportunity. That's my point exactly when I stipulated as I did. The fact is the only issues that we have in this petition that are--with regards to the need for termination of parental rights, are those paragraphs that we have just now talked about. And those are did she strike her daughter, Gabrielle, and she says yes she did. And is she under sentencing? Yes, she is. Now, beyond that, you know, if the Court finds that that is sufficient to terminate her parental rights because she struck her daughter on one occasion, I mean, perhaps--and I don't even know if we can go into it to that extent, but if Mr. Yee wanted to go into the extent of the circumstances that surrounded that fact and the sentencing, I suppose he could do that, but I don't even know if he can do that.

MR. WININGER: See, I disagree with Mr. Hoschner. I don't think he--the court rule is real clear. I'll read it once again. The Court must order termination, and Mr. Yee is correct, the Court must order termination if it finds that the original petition contains a request for termination that the

advisement until the evidentiary record is made. Because I think that once the Ccurt--once the Court--once the Court gets the information the Court will understand fully that it's not in the best interest to allow these children to be at risk for having their mother regain custody. These children won't even visit her or talk to her. And they have

phone cards and automobiles. They could visit her and talk to her without my knowledge if they wanted. They wouldn't even call her on mother's day when I told them they should.

MR. HOSCHNER: Your Honor, that has nothing to do with the issue today.

MR. YEE: it certainly does. It's the best interest

13 of the children and --

14 MR. HOSCHNER: The best interest of the children is not what we're dealing with today.

16 MR. YEE: I understand that.

17 MR. HOSCHNER: What we're dealing with --

18 MR. YEE: MR. YEE: But … the appellant rulings are … full of the Court's exercising discretion in the strict application of the rules. I think that if the Court wants they can go back and open up the jurisdictional part of it for examination and evidentiary hearings. The Court is not compelled to press forward. The Court can back up and reconsider it. …..

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the intention of the expectation that there would be an evidentiary hearing.

MR. BOWNE: Your Honor, on behalf of the children, I align myself with the Prosecutor's position as far as the termination process and procedure. With regards to the protection of the children I'm with Mr. Yee, I believe that, you know, the best interest phase, if we take it into that that the children are with him and are being protected that

the realm of this Court and the jurisdiction of this Court are absolutely necessary until it can be proven by Ms. Roche that she would not represent a risk of serious harm to any of the

kids. And maybe we're not--you know, maybe we want some more testimony from her now, but I don't know if we're really adequately advised as to the danger potential that could be out there.

MR. YEE: I will advise the Court that this witness on the stand now is predatory and –

MR. HOSCHNER: I'm going to object to that, your Honor.

THE COURT: You can't testify, Mr. Yee. I mean, you can't sit here and make all kinds of comments to this Court without some foundation of proofs with somebody on the stand.

MR. YEE: What I'm saying is given an opportunity to submit the evidence I can demonstrate to the Court that this woman is predatory and

that felonies are plea bargained down to misdemeanors. That upon trial it would be a felony. And so the matter was never fully elucidated, and the Court cannot accept the fact that a plea bargain to a misdemeanor is not a felony because in fact many felonies are plea bargained down and the Court's are familiar with it simply as a strategy of conserving resources. Now this is a different issue. This is an issue of protecting the children from a felon who plea bargained down to a misdemeanor.

THE COURT: (Inaudible - too low) -- the statute.

MR. YEE: It is in the best interest of the children.

(Courtroom doors opening and closing)

MR. YEE: If you ask them what they want they will tell you they want her parental rights terminated. They would not even call her on mother's day. (Inaudible - too low)--years of abuse. This is just the tip of the iceberg. if the Prosecutor--(inaudible - too low)--by this kind of a strategy that's just another example of the judicial system that fails to address what needs to be done. The entire community, everybody has different stories of dealing with the courts, I mean, that's why lawyer bashing is so popular. You know, anyone asked will say the court system -(inaudible)- for doing the wrong thing. If he doesn't terminate her parental rights it's the wrong thing. And if you ask the children five years from now when they are adults and they get a college education

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and they can articulate their thinking more clearly they will

make it quite clear to you this one beating wasn't what is was all about. So … if you feel good about what you're doing I think that if you ever have a responsibility for abused children of your own you'll think differently. I don't think you should feel good about what you did today.

MR. WININGER: I didn't -file the petition, sir.

MR. YEE: I understand that.

THE COURT: Well, all right-

MR. YEE: But you're a Prosecutor and you're in charge or protecting the community.

THE COURT: I think we need--the bottom line is if we apply that court rule then I'm stuck with a very limited

presentation at this point in time. However, the only thing it would fall under for legal justification is the Court may terminate a parents parental rights to a child if the Court finds that by clear and convincing evidence one or more of the following; and it obviously doesn't fall under desertion, but it would under (b) the child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances; the parents act causes physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parents home. Then the other option is sub (2),

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which is the parent had opportunity to prevent injury from other persons and there is a reasonable likelihood that they would suffer Injury or abuse in the foreseeable future. guess I could, under the evidence that was admitted to, that she was actually sentenced in district court, you know, I can find that (b) applies, (b)(1) applies. That there is legal justification for termination of parental rights. That therefore then I need to Look at -- the best interest. And I do think that then puts us into the evidentiary hearing, I mean

MR. HOSCHNER: So then you're ruling?

THE COURT: Well, I'm just saying, I mean, you know, you're trying to cut off what I've got before me and the bottom line is if I take a very narrow reading of that statute, those conditions have been met. There has been physical abuse of one child and, you know, she actually was sentenced for what she's plead to. And based on that

finding I could find that there is a reasonable likelihood in the future that the child or children would suffer in her care. Making that finding then, we're in a position where we do need to look at the best interest of the children. And then we would get into everything else.

MR. WININGER: If that's the Court's finding I believe that's correct.

THE COURT: And I think that under the circumstances

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this point. The only way we can get there in the future is if we set certain standards and she doesn't comply with it.

MR. HOSCHNER: But don't you have to then establish then by clear and convincing evidence that her rights should be

terminated today?

THE COURT: Yeah, that's the first part of it.

MR. YEE: I think an admission of beating a child is clear and convincing evidence. And a conviction upon a first degree child abuse felony that is plea bargained down is clear and convincing evidence.

THE COURT: Well, that's a decision I have to make.

Mr. Bowne what is the children's position?

MR. BOWNE: Your Honor, with regard to the children they definitely don't want to see mom, they don't want to go back with mom, they are clear that if dad were to pass away they do not want to live with morn. They have relatives that they are close to on Mr. Yee's family side that could take care of them while they are still minors.

They have stated that given time, and unspecified time, that perhaps maybe some point in time down the road they would visit, but not--they are not ready now. And I don't know if they ever will be. But I think at--you know, I know this is not in evidence, but this beating episode represented sort of the explosion of the volcano that has been brewing for a long time. And all three children--the beating took place on only the youngest

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child, but all three children are agreed that that was beyond the call and irrational and they just do not want to see her.

MR. YEE: I think, if the Court will--the beating of the one child was purposely done in front of the other children to intimidate them.

MR. HOSCHNER: I'm going to object to this, your Honor.

MR. YEE: And to submit-

THE COURT: There is no problem, Mr. Yee, jumping from one child to the three children. That is not a problem. Don't worry about that.

MR. YEE: Okay.

THE COURT: The--(inaudible)--case takes care of that. Okay.

MR. YEE: The point is that the charge was felony first degree child abuse that was plea bargained down to a misdemeanor, and-

THE COURT: Well, unfortunately-

MR. YEE: If there was a trial it would have been upheld.

MR. BOWNE: The child was taken to the hospital, your

Honor, so the--probably the transcript of the plea in district court would--and probation report, would verify as to how serious it was.

MR. YEE: Is there a mechanism to restore parental

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46 (At 11:42 a.m., court reconvened)

THE COURT: All right. You may be seated. We are reconvened in the matter of the Yee minors. And the Court has had a chance to discuss with the three minor children in this matter. And just for the record I will state Mr. Yee expressed a concern that, you know, they are young children and have some naivety, and yet they also seem to be very intelligent children who have I think some inside--(inaudible - too low)--thought on their desires. I think the problem we have is--well, we've got multiple problems at this point in time as far as the Court can see. And I think the Prosecutor has raised a very valid concern of proceeding with any further direction, since I already have an admission to the petition and jurisdiction. The Court feels that I'm kind of hanging out to dry in this situation. I think to move forward the Court is going to at this time find that the one incident of beating is not sufficient in and of itself to justify termination of mother's rights. And even though it was a severe beating, at least hospital treatment was necessary--was FIA not called at this time? I'm curious about that?

MR. YEE: FIA was called and they've been engaged throughout. But because I was providing further welfare they elected-

THE COURT: To not pursue it formally?

MR. YEE: Not to pursue it because they only do that

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when there is no home for the children that is safe.

THE COURT: All right. Anyway, the Court is going to take jurisdiction. The Court is going to enter an interim order, and the Court is going to set this for disposition. I'm going to have to try and find a worker. I don't know what6 kind of worker it will be, but it will be an FIA worker or my7 own worker. Mom, I'm going to tell you this right now, is I'm going to prohibit visitation until the children feel that they are ready. I'm going to keep control of this case, if I have to keep control I'm going to keep control six years to make sure that if something happens to dad that these children would be placed with a relative of his. Actually, in a little over a year the oldest boy could take the other two, but that is a lot of burden to put on an 18 year old, but it certainly is something that can be looked at. And you are going to be in a position where you're going to have to prove to this Court that at some point in time you've got control of your life and are in a position that you can justifiably earn some trust with these children to have them see you.

MS. ROCHE: How do I do that?

THE COURT: That is going to be through your counseling and through the procedures. And like I said I'm going to have to find a case worker. If I can't get FIA I'll have to find one of my court workers that will set some conditions. At this point in time you have an order that

denies contact. That order is also going to be adopted by this Court until further order of this Court, that you will not have any contact. And I guess then I'll to get that

record and see what that says exactly.

MR. YEE: That applies to Gabrielle, the youngest, not the other two.

THE COURT: Only to Gabrielle? Okay. Well, that will be enforced. The older two at this time do not wish any contact, and until I think we can get some stability that needs to continue. I mean, if they want to call her I have no problem. If they want to see her I have no problem, as does dad.

MR. YEE: I have no objection with them calling her or seeing her as long as they have a supervisor of their choice.

THE COURT: Right.

MR. YEE: Their choice. I don't want anyone else to choose for them.

THE COURT: It would be a neutral--so those two have no problem. They are very bright and intelligent and they can certainly do that. I have no problems with them picking somebody to supervise, It's going to be a slow process, mom. You have to continue to keep working and we will continue to see what unfolds. The Court will be setting this for a disposition. Under the circumstances I guess I

STATE OF MICHIGAN COUNTY OF SHIAWASSEE

I certify that this transcript, consisting of 53 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on July 16, 2001.

DATED: September 4, 2001

(sig) Jennette Sawyer, CER 5088 Certified Electronic Recorder, 12501 South M-52 Perry, Michigan 48872 (517) 230-8360

STATE OF MICHIGAN, IN THE CIRCUIT COURT FAMILY DIVISION FOR THE COUNTY OF SHIAWASSEE. In the Matter of SERGE YEE, SACHA YEE, GABRIELLE YEE, Minors; File No: 01-009756-NA

DISPOSITIONAL HEARING AND MOTION FOR REHEARING BEFORE THE HONORABLE JAMES R. CLATTERBAUGH, FAMILY COURT JUDGE

Corunna, Michigan 48817 - October 29, 2001

APPEARANCES: For the People: CRAIG WININGER (P57058), Assistant Prosecuting Attorney, 310 North

Shiawassee, Corunna, Michigan 48817, (989) 743-2373

For the Minors: LYNN D. BOWNE (P25976), 114 East Main Street, #215, Owosso, Michigan 48867, (989) 723-2900

For the Mother: ROBERT HOSCHNER (P15140), 149 East Corunna Avenue, Corunna, Michigan 48817, (989) 743-3030

In pro per: WILLIAM R. YEE (P35984), 915 East Oliver Street, P 0 Box 310, Owosso, Michigan 48867-0310 (219) 267-6189

Transcribed by: Lisa C. Kregger, CER 6881, (989) 743-2372 1 - 2

TABLE OF CONTENTS <u>WITNESSES</u>: None <u>EXHIBITS</u>: None 2 - 3

CORUNNA, MICHIGAN OCTOBER 29,2001 - 8:54 a.m.

THE COURT: Alright. This is the matter of the Yee minors and actually what we initially did was we--date, time set for disposition but we also set--Mr. Yee has filed a Motion for Rehearing. And, so, we set that first, to be heard prior to the disposition. Mr. Bowne is here, who's

representing the minor children. Mr. Wininger, from prosecuting attorney's here. Mr. Hoschner's here, who represents Christine Roche. Ms.--Christine Roche's here and Mr. Yee's here. So --and Mr. Yee I have-I have a great deal of confusion. I have two checks from you, one for $20.00 for Family Court tied to a Notice of a Claim of Appeal and I have another check for $25.00, which has on there claim of appeal.

MR. YEE: The--it's an application for leave to appeal, I believe. Anyway--in any case, the--the court employees are not accustomed to taking- taking money for motions. And it was my understanding this was part--part of the circuit court and therefore

the fees applied that applied to the circuit court. And they were connecting themselves as if it was part of the probate court, which does not as a matter of course, accept fees for motions and--and for notices. And the reason why the one check was for 20 and was one for 25, they didn't know what to charge me so they took a check for 20 the first time. And it was understanding that the Application for Leave to Appeal or the Claim of Appeal, either one of them requires a $25.00 fee in the circuit court. So, that's why you have those checks. And-

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THE COURT: Well, I guess I want to return the checks because bottom line is, one is we don't have fees here, two is you gotta appeal--were not a proper place to--I mean you can appeal from us but you can't appeal--you know, there's no reason to file it with us as the appeal.

MR. YEE: Well-

THE COURT: Because you're appealing--were

appealing--you're appealing our decision. So my guess is

you either got to go to circuit court or court of appeals.

MR. YEE: In the--in the circuit court the custom is to accept the $25.00 fee to--to--as the fee to move the--the records to the Court of Appeals. And it - - and you have to file the notice of appeal in the circuit court, is my understanding is how the rules apply in the circuit court. Is--are we on the probate court or the circuit court--it's not clear, your honor--?

THE COURT: Well, you're--you're in the juvenile family division, which has been made part of the circuit court.

MR. YEE: Okay.

THE COURT: But-

MR. YEE: Do the rules that apply to the circuit court apply to this court? That's the question, I was gonna

THE COURT: I would guess--I would assume the rules would apply, but I think the old rules still apply. You're--you're appealing a juvenile, even though its called family court and part of the circuit court, you're appealing a juvenile court decision. So I think you have to go to the court rules that apply to appeal to

juvenile division, that wag previously juvenile

division, it's now family court. I don't think-my recollection, I haven't seen any real revisions in that once they made the family court. I think what they did is they did not anticipate the merger to it's fullest extent when they came to the appeal process. Because they made us the family court but for all practical purposes I think you have to go to the court rules for appeals of a juvenile matter.

MR. WININGER: Your honor, if I may, the court rules do now indicate

MCR 5.901, indicates that those court rules govern practice in the family division of circuit court. So it has been amended to reflect that under the court rules that you would use.

MR. YEE: Which--which rules apply?

MR. WININGER: 5.9.

MR. YEE: You're saying those rules, what are those rules, which set of rules are you talking about?

MR. WININGER: Michigan Court Rules 5.9 and what follows the 5 point--chapter 5.9.

THE COURT: Are your-

MR. YEE: You're saying something applies, what are you saying applies under that rule?

MR.WININGER: I'm saying all those rules apply to this Court.

MR. YEE: All the district court rules?

MR. WININGER: All of the probate court rules.

MR. YEE: All of the probate court rules.

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MR. WININGER: The juvenile division rules.

MR. YEE: Okay, in any case I have filed--I have filed an appeal and I've submitted papers to the parties and the papers from Christine Roche were returned to me. And I'd-I'd like to take this opportunity to make a motion that Christine Roche be compelled to give me her home address where she can receive these papers, cause they were returned to me. She had formally given me notice that Mr. Dulmage office is--would be where she would be receive mailings. And I did submit the service papers required by the court rules to her, and they were returned to me. And so now I'm

asking the Court to order her to give me the address, her address, where she will receive service of process.

AUDIENCE: Excuse me, your Honor--.

MR. YEE: Also, her address where she lives. And I would like that the audience be forbidden to interrupt while I'm talking--

THE COURT: Well, she has an attorney right now, representing her in this matter, you could have served papers on him.

MR. YEE: Mr. Dulmage is attempting to interrupt my plea to the Court.

THE COURT: Well, Mr. Hoschner is--is--is her attorney though. Why couldn't you just serve Mr. Hoschner for the appeal?

MR. YEE: Because it's under my--my understanding under the rules that the parties are supposed to be served when you--when you make an appeal. But I did serve him also.

THE COURT: So she has service then?

MR. HOSCHNER: Yes, your Honor.

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THE COURT: Okay.

MR. YEE: Well, for the record she has service, served--on the matter of appeal, so-so that that's not going to be an issue?

THE COURT: So, she has notice of it right, she has notice of-

MR. HOSHCNER: Once I have notice, she has notice, your Honor, I believe.

THE COURT: Right.

MR. HOSCHNER: Under the court rules.

MR. YEE: Okay, So, in any case, I've made a motion that--that there be a reconsideration for this reason, the prosecutor called a point of order that once the Court makes--establishes jurisdiction, then all further evidentiary proceedings cease and then the Court is required to make a ruling. I'm stating that that's probably a misconstruction of the rules for this reason, at the time that he raised that point I was examining Christine Roche on the record I had not rested my case I was just beginning to present evidence. If in fact the--the hearing on jurisdiction constitutes the evidentiary hearing, upon which the Court's gonna make a determination whether there's sufficient basis to terminate parental rights, that - - that hearing on jurisdiction should not be terminated before I've had an opportunity to present my case and I've rested. And that did not happen. If the Court operates under the prosecutor's construction, anybody can avoid termination of parental rights simply by waiving an objection and stipulating to jurisdiction. And then at that point according to his construction all the evidentiary admissions cease and based on a mere stipulation to jurisdiction the

the parent can prevent any evidentiary evidence. And therefore would in every case be capable of avoiding parental rights simply by the strategy of stipulating to jurisdiction and then noticing to the Court that jurisdiction is established. Therefore, evidentiary proceedings must pro--must be terminated and therefore permitting, there would be evidence in any case. I was right in the middle of examining her and I had not rested my case and I think I should be permitted to complete submitting evidence. Because it is in the children's best interest for the Court to know all of the facts and this Court does not know all of

the facts. And this Court based on the current situation, will be denying termination of parental rights without the opportunity to know that in fact there's a course of abuse by the--by Christine Roche and Mr. Dulmage over a course of years, that would-that would compel the Court to terminate the rights because there has been many years of treatment of the alleged mental illness. And the children have been induced in to treatment and the treatment process has been frustrated and--and--and manipulated by Christine Roche as an opportunity to add to the abuse rather than to improve her--her-her function as a parent. And that the Court based on--on a long course of conduct, which is--it is not, examined will be compelled to terminate.

MR. WININGER: Your Honor, I guess I'm gonna object, I think were getting far beyond the Motion and into a factual determination. This is a Motion for Reconsideration based on certain specific things.

MR. YEE: I am-

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MR. WININGER: I think this litany, I guess I'm gonna object to how -- how we're gonna go on that.

MR. HOSCHNER: And--and I would also object your Honor. I think it was very clear cut this Court had before it a specific petition that was limited in its nature and it had all the facts with regards to those issues. I don't know how we can go into anything further its just redundant and it--and unnecessary in this matter.

MR. YEE: Before the Court makes it's ruling I'd like to make on record my answer to their objections. My answer to their objection is this, they have by a strategy of--of--of perverting the court rules prevented this Court from

examining evidence upon which it is--would--would be compelled to terminate parental rights. And I am not presenting evidence; I am outlining the scope of evidence that this Court does not have. That--that it--that the children's best interest is required that the Court examine before it makes its' judgment. And the litany is large because the scope of the abuse is large. And the scope of abuse entails not only the patient or the mother, who is the parent, but it includes her strategy of applying her psychiatric treatment and inducing the children into treatment and perverting that treatment into another source of abuse and control against their best interest. And this--this course of conduct is so protracted and includes so many strategies, that the Court once it sees, on the record, what has been done will be compelled to conclude that there is no reasonable basis for concluding that she can be rehabilitated as a parent.

THE COURT: Any other responses?

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THE COURT: Any other responses?

9 - 10

MR. WININGER Your Honor, again the factual determinations that Mr. Yee wants to bring and drag this Court through aren't before the Court today. This is solely a motion for reconsideration. And--and so I don't think we need to hear all this. I think we need to hear a legal argument and we can respond to a legal argument.

MR. YEE: The reconsideration is inadequate without the Court being aware of how much is missing.

THE COURT: Alright. Mr. Yee you've had a chance to argue your

Motion. Counsel have a right to object at this--or give their positions.

MR. BOWNE: Your Honor, if I may, and again I guess if we use--this happened last week in another case—I

would--and I would think it's a reconsideration of court rules or rehearing – rehearing court rule in probate courts, MCR 5.992. and I'm a little bit confused because I--I see that Mr. Yee's filed in the Court of Appeals an appeal where alternatively district court, family court, so I'm not really sure. But I would think that if--two things were here on today is dispositional and I think the rehearing request. And I think this Court is pretty much handcuffed to do anything further because pursuant to this court rule there's nothing new that's being submitted to this Court and so the Court's decision has to stand as this Court ommunicated last time we were in court. And Mr. Yee's remedy is then to appeal your decision.

MR. HOCHNER: Your Honor, on--on behalf of my client I would state that--I would agree with both counsel so far that there is nothing new. All of the issues that Mr. Yee has brought before in his brief and in his petition are the same

issues that this Court had before them and this Court specifically rules that there were only a certain number of provisions that were going to be permitted to be brought forth in this petition and--and I was not here and present for that, I was brought into the case after that point. But--but he hasn't brought anything new. Everything that he's talking about the Court was well aware of and has rules prior that that was not a part of this proceedings.

THE COURT: Okay.

MR. YEE: May--may I answer that? I think--I think there was a discussion of--of what was before the Court but I don't think that the--that that was formally entered as an order of the Court and I think that I--I filed an—an

amended petition as requested by the Court. And I think that amended petition does stand and there is no court order restricting the--the petition to any paragraphs in the original petition. The--the Court did order as I understand it an amended petition and that amended petition was filed.

MR. BOWNE: Your Honor, I think the Court's order was July 20th of this year. The final, the most recent order that set this dispositional hearing and making the rulings.

THE COURT: Well that's true. That's not a problem. Okay. Anything else?

MR. YEE: That's all your Honor.

MR. WININGER: Your Honor, I would--I'm sorry but are we arguing at this point the objection or are we arguing his Motion? I've sort of lost my way.

THE COURT: We're arguing the Motion.

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MR. YEE: Well I am still answering the objection because the Court hasn't made--made a ruling on the objection yet. And I haven't--so therefore I have not made much argument on the--on the motion itself

THE COURT: I--what other argument is there on the motion?

MR. YEE: The argument

THE COURT: The objection--objection I'll, I mean I-make--make your statement on the Motion, I thought you had done that.

MR. YEE: Okay, I will proceed now with the statement on the Motion because my--my argument was interrupted on--on--on objection. Now getting back to the Motion the petitioner, William Yee, was in the middle of examining

Christine Roche and submitting the evidence this Court requires to make a ruling on terminating parental rights. That-that evidentiary proceeding was interrupted based on a technicality. That technicality is in error. The technicality is in error because if there--if the petition on jurisdiction is considered the evidentiary hearing for termination, then it cannot be terminated while the petitioner is still submitting evidence in examination of Christine Roche, the mother's whose rights--may be terminated by this Court. And that's what happened. I was not permitted to submit evidence. I was stopped.

THE COURT: Alright. Alright, Court--I'm gonna--this Court has been very patient in this matter and I'm gonna put a record together right now. It's my understanding that this matter has been battled on in circuit court in front of Judge Lostracco, he's made some rulings and basically came out of there and this has now been filed here. This Court looked at the documents, the Court narrowed

down the petition, this is--this is a petition filed by Mr. Yee against his ex-wife to terminate her rights and the three children. One of which is now 17, the other one is 15, and then there is the one that was--is 12 at this time, going on 13 if I'm not mistaken. There's no question Mrs. Roche abused the one child, she's taken the consequences in District Court. She did her probation. There may be a lot of history and that is--is you know out there, but bottom line is--is this appears to this Court to be just--just a vindictive method of trying to get to a point of, I'm not sure what. Mr. Yee expresses this great concern that he wants to terminate because he could die and he doesn't want her to have a right to come and get the children. That is not grounds for termination. The Court made a finding

and ruling on the last hearing that one incident that Mrs. Roche pled to was not sufficient to find legal justification to terminate her parental rights to these three children. And the Court did take jurisdiction at that time which was probably the greatest error that the Court made in that whole proceeding. The Court is going to find that there's no new grounds to proceed with the termination petition. The Court has already made a finding that one incident of abuse is not sufficient

grounds to terminate parental rights. The Court is going to deny the Motion to rehear this matter and in fact the Court's going to, as far as disposition goes, the Court is gonna dismiss this jurisdiction of this Court. And let Mr. Yee appeal to higher courts and do what he wishes to do. This Court will not take jurisdiction of this matter and this Court will not proceed to hear issues with this--these children are old enough they're protected, they're in Mr. Yee's care and custody and there's no justification for this Court to be involved at this time in their care.

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MR. YEE: Would, you sign--sign this order denying my petition, please?

THE COURT: Okay. Would you let the other counsel see if they have any problems with that?

MR. YEE: Sure. Simply an order denying my Motion for reconsideration. I'll submit copies to you in the mail today.

MR. HOSCHNER: I think that it outta include, your Honor, the additional..

THE COURT: Well we'll make our own order outta that Mr. Hoschner.

MR. HOSCHNER: As far as it is now, it's fine for that, your Honor. Is this dismissal with prejudice, your Honor,

so that we end this matter at this time?

THE COURT: It is with this Court.

MR. HOSCHNER: Thank you, your Honor.

MR. YEE: What did you--what do you think it should include?

MR. HOSCHNER: His--his order that this matter is being dismissed with prejudice.

MR. BOWNE: I have no objection to it.

THE COURT: The Court will also submit an order coming out of the transcript of this record.

MR. WININGER: The Court will submit it's own order?

THE COURT: Yes.

MR. WININGER: I have no objection.

THE COURT: Court's adjourned.

(At 9:14 a.m., proceedings concluded)

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STATE OF MICHIGAN}

COUNTY OF SHIAWASSEE}

I certify that this transcript, consisting of 15 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on October 29, 2001. Dated: November 5, 2001

(sig)Lisa Kregger, CER 6881, 110 E. Mack Street Corunna, MI 48817

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J78 CASE SUMMARY 2/04/2002

CASE #1009756-3 YEE/GABRIELLE CASE TYPE NA FILED 1/09/2001

JURIST CLATTERBAUGH ATTORNEY BOWNE WORKER

DOB 3/31/1989 GENDER F RACE WA SSN SID

EVENT # DATE TYPE PETITION CHG PLACEMENT COMMENTS NEXT HRG DATE NEXT HRG TYPE

9 03/02/2001 ORD 851 CASE MANAGEMENT ORDER 5/14/2001 PT

8 02/01/2001 PSV 851 PROOF OF SERVICE 0/00/000

7 02/01/2001 SUM 851 SUMMONS ISSUED 0/00/000 RST

6 01/30/2001 ORD 851 CASEMANAGEMENT ORDER 2/22/2001 PT

5 01/22/2001 PRH 851 PRELININARY HEARING 0/00/000

4 01/16/2001 ATT 851 APPEARANCE OF BOWNE-MINORS 0/00/000

3 01/09/2001 NOH 851 NOTICE OF HEARING 0/00/000

2 01/09/2001 ATP 851 BOWE FOR MINORS 0/00/000

1 12/21/2000 PET 851 PETITION 0/00/000

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53 12/10/2001 PSF 851 PROOF OF SERVICE 0/00/000

52 12/10/2001 ATF 851 NOTICE OF CLAIM OF APPEAL 0/00/000

51 12/10/2001 ATF 851 DOCKET ENTRIES 0/00/000

50 12/10/2001 ATF 851 TITLE & SIGN PG OF TRANSCRIPT 0/00/000

49 12/10/2001 ATF 851 COPY OF LETTER FROM COA TO YEE 0/00/000

48 11/30/2001 ORD 851 ORDER FROM THE CT OF APPEALS0/00/000

45 11/02/2001 PSV 851 PROOF OF SERVICE 0/00/000

47 11/01/2001 PSV 851 PROOF OF SERVICE 0/00/000

46 11/01/2001 ORD 851 ORDER DENYING MOT REHEARING0/00/000

44 10/31/2001 DSP 851 DISPOSITIONAL HEARING 0/00/000

43 10/29/2001 MOH 851 MOTION HEARING 0/00/000

42 10/19/2001 PSV 851 PROOF OF SERVICE 0/00/000

41 10/19/2001 NOH 851 NOTICE OF HEARING 0/00/000

40 10/19/2001 BRF 851 BRIEF FILED 0/00/000

39 10/19/2001 MOT 851 MOT FOR ORDER OF TRIAL&TESTIM 0/00/000

38 10/12/2001 NOH 851 MOT FOR ORDER OF

TRIAL&TESTIM 10/29/2001 MOH

37 09/10/2001 ATF 851 TRANSCRIPT REQUESTED BY YEE 0/00/000

36 08/03/2001 ANS 851 ANS. TO MOT RECONSIDERATION 0/00/000

35 07/27/2001 PSV 851 PROOF OF SERVICE 0/00/000

34 07/27/2001 BRF 851 BRIEF FILED 0/00/000

33 07/27/2001 MOT 851 MO. RECONSID. ACTIONS OF 7/16 0/00/000

32 07/27/2001 PSV 851 PROOF OF SERVICE 0/00/000

31 07/16/2001 FOH 851 FORMAL HEARING 0/00/000 DSP

30 07/10/2001 PSV 851 PROOF OF SERVICE 0/00/000

29 07/10/2001 ATF 851 EXHIBITS FROM Mr.YEE 0/00/000

28 07/05/2001 PSV 851 PROOF OF SERVICE 0/00/000

27 07/05/2001 WIT 851 WITNESS LIST FROMMr. YEE 0/00/000

26 07/05/2001 ATF 851 EXHIBIT LIST FROM Mr. YEE 0/00/000

25 06/22/2001 WIT 851 WITNESS LIST 0/00/000

24 05/17/2001 PSV 851 PROOF OF SERVICE 0/00/000

23 05/17/2001 ADJ 851 ORDER OF ADJOURNMENT 7/17/2001 FOH

22 05/17/2001 ADJ 851 ORDER OF ADJOURNMENT 7/17/2001 FOH

21 04/30/2001 ATP 851 HOSCHNER FOR MOTHER 0/00/000

20 04/30/2001 ATF 851 LETTER FROM MRS YEE TO JUDGE 0/00/000

19 04/30/2001 ANS 851 ANSWER TO PETITION 0/00/000

18 03/29/2001 PSV 851 PROOF OF SERVICE 0/00/000

17 03/29/2001 BRF 851 BRIEF FILED 0/00/000

16 03/29/2001 JUR 851 DEMAND FOR JURY TRIAL 0/00/000

15 03/20/2001 ATF 851 EXHIBIT LIST FROM MR YEE 0/00/000

14 03/20/2001 WIT 851 WITNESS LIST 0/00/000

13 03/05/2001 ORD 851 ORDER TO WITHDRAW AS ATTY 0/00/000

12 03/05/2001 STP 851 STIP TO WITHDRAW AS ATTY 0/00/000

11 03/02/2001 PET 851 AMENDED PETITION 0/00/000

10 03/02/2001 PSV 851 PROOF OF SERVICE 0/00/000

I certify that I have compared this copy with the original on file in this Court and that it is a correct copy of the whole of such original. Signed and sealed at Corunna, Michigan this 4th day of February, 2002 James R. Clatterbaugh, Judge of Probate, Shiawassee County, Corunna, Michigan By (sig) Ellen S. Myers, Juvenile Register

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15 03/20/2001 ATF 851 EXHIBIT LIST FROM MR YEE 0/00/000

14 03/20/2001 WIT 851 WITNESS LIST 0/00/000

13 03/05/2001 ORD 851 ORDER TO WITHDRAW AS ATTY 0/00/000

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1 12/21/2000 PET 851 PETITION 0/00/000

STATE OF MICHIGAN, OUNTY OF SHIAWASSEE: I Lauri L. Braid Clerk of the

County of Shiawassee do hereby Certify that the

foregoing is a true and correct copy of the original thereof on file in said County. Signed and sealed at Corunna, Michigan this 10th day of May, Lauri L. Braid, County Clerk, By (sig) Lisa Kiss, Deputy Clerk.

J78 CASE SUMMARY 5/10/2002

CASE #1009756-3 YEE/GABRIELLE CASE TYPE NA FILED 1/09/2001 JURIST CLATTERBAUGH ATTORNEY BOWNE WORKER

DOB 3/31/1989 GENDER F RACE WA SSN SID

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59 04/23/2002 ATF 851 ORDER FROM APPEALS RE:ROA 0/00/000

53 12/10/2001 PSF 851 PROOF OF SERVICE 0/00/000

52 12/10/2001 ATF 851 NOTICE OF CLAIM OF APPEAL 0/00/000

51 12/10/2001 ATF 851 DOCKET ENTRIES 0/00/000

50 12/10/2001 ATF 851 TITLE & SIGN PG OF TRANSCRIPT 0/00/000

49 12/10/2001 ATF 851 COPY OF LETTER FROM COA TO YEE 0/00/000

48 11/30/2001 ORD 851 ORDER FROM THE CT OF APPEALS 0/00/000

56 11/05/2001 ATF 851 TRANSCRIPT OF 10/29 HRG ENTERE 0/00/000

45 11/02/2001 PSV 851 PROOF OF SERVICE 0/00/000

47 11/01/2001 PSV 851 PROOF OF SERVICE 0/00/000

46 11/01/2001 ORD 851 ORDER DENYING MOTREHEARING 0/00/000

57 10/31/2001 ORD 851 ORDER OF DISPOSITION SIGNED 0/00/000

44 10/31/2001 DSP 851 DISPOSITIONAL HEARING 0/00/000

43 10/29/2001 MOH 851 MOTION HEARING 0/00/000

42 10/19/2001 PSV 851 PROOF OF SERVICE 0/00/000

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40 10/19/2001 BRF 851 BRIEF FILED 0/00/000

39 10/19/2001 MOT 851 MOT FOR ORDER OF TRIAL&TESTIM 0/00/000

38 10/12/2001 NOH 851 MOT FOR ORDER OF TRIAL&TESTIM 10/29/2001 MOH

55 10/01/2001 PSV 851 PROOF OF SERVICE 0/00/000

54 10/01/2001 ATF 851 NOTICE OF CLAIM OF APPEAL 0/00/000

37 09/10/2001 ATF 851 TRANSCRIPT REQUESTED BY YEE 0/00/000

36 08/03/2001 ANS 851 ANS. TO MOT RECONSIDERATION 0/00/000

35 07/27/2001 PSV 851 PROOF OF SERVICE 0/00/000

34 07/27/2001 BRF 851 BRIEF FILED 0/00/000

33 07/27/2001 MOT 851 MO. RECONSID. ACTIONS OF 7/16 0/00/000

32 07/27/2001 PSV 851 PROOF OF SERVICE 0/00/000

58 07/20/2001 ORD 851 ORDER FOR FROMAL TRIAL SIGNED 0/00/000

31 07/16/2001 FOH 851 FORMAL HEARING 0/00/000 DSP

30 07/10/2001 PSV 851 PROOF OF SERVICE 0/00/000

29 07/10/2001 ATF 851 EXHIBITS FROM Mr. YEE 0/00/000

28 07/05/2001 PSV 851 PROOF OF SERVICE 0/00/000

27 07/05/2001 WIT 851 WITNESS LIST FROM Mr. YEE 0/00/000

26 07/05/2001 ATF 851 EXHIBIT LIST FROM Mr. YEE 0/00/000

25 06/22/2001 WIT 85I WITNESS LIST 0/00/000

24 05/17/2001 PSV 851 PROOF OF SERVICE 0/00/000

23 05/17/2001 ADJ 851 ORDER OF ADJOURNMENT 7/17/2001 FOH

22 05/17/2001 ADJ 851 ORDER OF ADJOURNMENT 7/17/2001 FOH

21 04/30/2001 ATP 851 HOSCHNER FOR MOTHER 0/00/000

20 04/30/2001 ATF 851 LETTER FROM MRS YEE TO JUDGE 0/00/000

19 04/30/2001 ANS 851 ANSWER TO PETITION /00/000

18 03/29/2001 PSV 851 PROOF OF SERVICE 0/00/000

17 03/29/2001 BRF 851 BRIEF FILED 0/00/000

16 03/29/2001 JUR 851 DEMAND FOR JURY TRIAL 0/00/000

Court of Appeals, State of Michigan, Donald E. Holbrook, Jr., Presiding Judge; Richard Allen Griffin, Donald S. Owens, Judges

ORDER, Docket No. 239654, LC No. 01-009756-NA
William R Yee v Shiawassee Circuit Judge

In lieu of granting the complaint for superintending control, the Court orders under MCR 7.206(D) and MCR 7.21 6(A)(7) that defendant is ordered to direct the circuit court clerk to enter into the lower court record the July 20, 2001 order for formal trial and the October 31, 2001 order of disposition, after which plaintiff may pursue any further remedies to which he may be entitled under the court rules.

The Court retains no further jurisdiction.

(sig) Donald E. Holbrook, Jr. Presiding Judge
(Seal STATE OF MICHIGAN COURT OF APPEALS)
APR 19 2002 (sig)Sandra Schultz Mengel
Date Chief Clerk